No. 7343

United States

Circuit Court of Appeals

For the Ninth Circuit.

SOUTHERN PACIFIC COMPANY, a Corporation,
Appellant,

vs.

F. J. BAFFERT and A. S. LEON, Copartners, trading under the firm name of BAFFERT & LEON,
Appellees.

and

SOUTHERN PACIFIC COMPANY, a Corporation, and SANTA MARIA VALLEY RAILROAD COMPANY, a Corporation,
Appellants,

vs.

WHEELER-PERRY COMPANY, a Corporation,
Appellee.

Transcript of Record

Upon Appeals from the District Court of the United States for the District of Arizona.

Parker Printing Company, 545 Sansome Street, San Francisco.

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INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

Index

Index Page

Index Page

Index Page

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L-738-Phoenix.

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*Page numbering appearing at the foot of page of original certified Transcript of Record

In the District Court of the United States, in and for the District of Arizona.

No. L-738-Phx.

F. J. BAFFERT and A. S. LEON, co-Partners trading under the firm name of Baffert & Leon,
Plaintiffs,

vs.

SOUTHERN PACIFIC COMPANY,
a corporation,
Defendant.

COMPLAINT AT LAW.

Come now the above named plaintiff's and for cause of action against the above named defendant, complain and allege:

I.

That at all times hereinafter mentioned plaintiffs, F. J. Baffert and A. S. Leon, were and now are co-partners doing business in the State of Arizona under the firm name of Baffert & Leon;

II.

That at all times hereinafter mentioned the Southern Pacific Company was and now is a railway corporation engaged in the operation of railroads and railway lines for the transportation of freight in interstate commerce;

III.

That prior to the filing of this complaint these plaintiffs filed their petition and complaint with and

before the Interstate Commerce Commission of the United States, alleging that the freight rates charged and collected upon 18 car load shipments of sugar, originating at Crockett and Oxnard, State of California, and destined to the complainants at Tucson, Arizona, were unjust, [5] unreasonable and excessive as to the said complainants, and asking for reparation upon said shipments for the amounts that the rates charged by the defendant upon said shipments exceeded the rates which the Commission might determine should have been charged upon said shipments; that thereafter the defendant filed its answer to said complaint with and before the Interstate Commerce Commission; said cause being docketed under Docket No. 17549 (Sub-No. 1).

IV.

That said Interstate Commerce Commission made, issued, published and filed its Report and Findings of Fact on March 12, 1928, in which said Commission found that the rates of 84¢ and 75¢ per hundred pounds which had been charged by said defendant against said plaintiffs upon said 18 car load shipments of sugar from said points of origin in California to Tucson, Arizona, were unjust, unreasonable and excessive, as to the plaintiffs to the extent that they exceeded a rate and charge of 77¢ per hundred pounds upon all shipments originating at Crockett, California, and a rate of 73¢ per hundred pounds upon all shipments originating at Oxnard, California from and after July 1, 1922; and said Commission in said Report and Findings further

found that the plaintiffs herein were entitled to reparation on all said shipments from said points of origin in California to said point of destination in Arizona, and to interest thereon, a copy of which Report and Findings of said Commission is hereto attached, marked Exhibit "A", and made a part hereof;

V.

That said Commission required and directed that said complainants should comply with Rule V, of the rules and practice of the Interstate Commerce Commission which rule required a statement of shipments, the dates thereof, the dates on which charges therefor [6] were paid, the car initials and numbers, points of origin, the routes over which the shipments moved, the weights of shipments, the rates charged, the amounts collected, the rates which should have been charged, the amounts which should have been collected and the differences between the charges assessed and those which the Commission found should have been collected; that in pursuance of said requirements of the Interstate Commerce Commission the complainants, plaintiffs herein, did duly and properly certify a statement under said rule and transmitted the same to the defendant, Southern Pacific Company, and the same was thereafter certified to by said Southern Pacific Company and was transmitted by the Southern Pacific Company to the Interstate Commerce Commission as required by the rules and regulations of said Commission, a copy

of which statement is hereto attached, marked Exhibit "B", and made a part hereof.

VI.

That thereafter, and on the 7th day of September, 1929, said Commission duly made and published its order directing and requiring the defendant herein to pay unto the said plaintiffs, *T.* J. Baffert and A. S. Leon, co-partners trading under the firm name of Baffert & Leon, the sum of $726.28, together with interest thereon at the rate of six per cent per annum from the respective dates of payment of the charges shown on Exhibit "B", the said sums to be paid on or before the 22nd day of October, 1929; said reparation being on account of the unreasonable rates charged for the transportation of said car load shipments of sugar from Crockett and Oenard, California, to Tucson, Arizona, as will more fully appear from a copy of said order hereto attached, marked Exhibit "C", and made a part hereof; [7]

VII.

That said defendant has failed and refused to pay said reparation or any part thereof either principal or interest, although request and demand has heretofore been made by the plaintiffs upon the defendant for the payment of said reparation;

VIII.

That by reason of said unjust, unreasonable and excessive rates and charges and payment thereof by the plaintiff, and by reason of the refusal of said

defendant to pay said reparation awarded by said Commission, the plaintiff have been damaged in the sum of $726.28, together with interest thereon at the rate of six per cent per annum from the respective dates of the payment of the charges as shown on Exhibit "B", no part of which has ever been paid;

IX.

That the sum of $300.00 is a reasonable attorney's fee to be allowed in this action;

WHEREFORE, plaintiffs demand judgment in their favor and against the defendant for the sum of $726.28, together with interest thereon from the respective dates of payment as above set forth, together with $300.00 as and for attorney's fee and for plaintiffs' costs and disbursements in this action, and plaintiffs pray that process may issue hereon.

SAMUEL WHITE,
V. R. SEED,
Attorneys for Plaintiff. [8]

EXHIBIT A

13146

Interstate Commerce Commission

No. 16742[1]

TRAFFIC BUREAU OF PHOENIX CHAMBER OF COMMERCE ET AL. v. ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.

Submitted April 6, 1927. Decided March 12, 1928

Rates on sugar, in carloads, from California points to destinations in Arizona and from California and Colorado points to Gallup, N. Mex., found unreasonable. Reasonable rates prescribed and reparation awarded. Original findings in Nos. 14449 and 14140 modified in part. Former reports, 95 I. C. C. 244 and 101 I. C. C. 667.

Roland Johnston, Chas. E. Blaine, Calvin L. Blaine, F. W. Pullen, and R. S. Sawyer for complainants.

James R. Bell, G. H. Muckley, James E. Lyons, H. H. McElroy, A. Burton Mason, J. L. Fielding, Del W. Harrington, E. W. Camp, Platt Kent, F. W. Mielke, and Berne Levy for defendants.

Report of the Commission

CAMPBELL, Chairman:

These cases are related and will be disposed of in one report. Defendants in all of the cases and complainants in Nos. 16742, 16770, and Sub-Nos. 1, 3, 4, 5, and 9 filed exceptions to the proposed report of

the examiners, and defendants replied to complainants' exceptions. The cases were orally argued before us.

In these complaints it is alleged that the rates on sugar, in carloads, from California points to destinations in Arizona and from [9] California, Kansas, and Colorado points to Gallup, N. Mex., were and are unreasonable and in some instances unduly

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[1]This report also comprises No. 16770, Bashford-Burmister Company v. Atchison, Topeka & Santa Fe Railway Company et al.; No. 16770 (Sub-No. 1), Central Commercial Company v. Same; No. 16770 (Sub-No. 2), Wheeler Perry Company v. Santa Maria Valley Railroad Company et al.; No. 16770 (Sub-No. 3), T. F. Miller Company v. Atchison, Topeka & Santa Fe Railway Company et al.; No. 16770 (Sub-No. 4), E. F. Sanguinetti v. Southern Pacific Company et al.; No. 16770 (Sub-No. 5), Arizona Grocery Company v. Atchison, Topeka & Santa Fe Railway Company et al.; No. 16770 (Sub-No. 6), Arizona Wholesale Grocery Company et al. v. Arizona Eastern Railroad Company et al.; No. 16770 (Sub-No. 7), C. N. Cotton Company v. Atchison, Topeka & Santa Fe Railway Company et al.; No. 16770 (Sub-No. 8), Babbitt Brothers Trading Company et al. v. Same; No. 16770 (Sub-No. 9), Wm. H. Dagg Mercantile Company v. Same; No. 17549, Phelps Dodge Mercantile Company v. Same; No. 17549 (Sub-No. 1), Baffert & Leon v. Same; No. 17466, United Verde Extension Mining Company v. Same; No. 17781, Simpson-Ashby Company v. Southern Pacific Company; and Nos. 14140, Solomon-Wickersham Company v. Santa Maria Valley Railroad Company et al., and 14449, Traffic Bureau, Phoenix Chamber of Commerce et al. v. Atchison, Topeka & Santa Fe Railway Company et al., reopened for argument.

prejudicial and preferential. We are asked to prescribe just and reasonable rates for the future and to award reparation. Rates and rate differences are stated in amounts per 100 pounds.

In No. 16742, filed February 9, 1925, and No. 17781, filed informally March 16, 1925, and formally November 27, 1925, reparation is asked, respectively, on shipments from California points to Phoenix to the basis of the rate of 71 cents found reasonable on and after July 1, 1922, in No. 14449, Phoenix Chamber of Commerce v. A., T. & S. F. Ry. Co., 95 I. C. C. 244, reopened for argument with these consolidated cases.

In No. 16770 (Sub-Nos. 1 to 9), filed on various dates from February 17 to May 5, 1925, inclusive, it is alleged that the rates from California points to Prescott, Kingman, Tucson, Clarkdale, Yuma, Bowie, Safford, Globe, Flagstaff, Winslow, and Holbrook, Ariz., and from California, Kansas and Colorado points to Gallup were and are unreasonable. There are also allegations that the rates assailed were and are unduly prejudicial to Tucson and unduly preferential of Phoenix; unduly prejudicial to Bowie, Safford, and Globe and unduly preferential of Phoenix and other points taking the same rate, Lordsburg and Deming, N. Mex., and El Paso, Tex.; unduly prejudicial to Gallup and unduly preferential of Albuquerque, N. Mex., and El Paso; and unduly prejudicial to Kingman, Flagstaff, Winslow, and Holbrook and unduly preferential of Albuquerque and Phoenix.

In Nos. 17549, 17549 (Sub-No. 1), and 17466, filed, respectively, on September 3, 1925, February 9, 1926, and August 24, 1925, the rates from California points to Bisbee, Douglas, Clifton, Tucson, and Clarkdale, Ariz., are alleged to have been and to be unreasonable and also unduly preferential of Phoenix and other points.

No. 16742 and No. 16770 (Sub-Nos. 1 to 9) were heard together. Nos. 17549, 17549 (Sub-No. 1), and 17466 were heard together. The parties in No. 17781 agreed to submission of the case upon the record in Nos. 17549, 17549 (Sub-No. 1), and 17466, except as to proof of payment of freight charges.

Phoenix is the only point in Arizona served by both the Atchison, Topeka & Santa Fe, hereinafter referred to as the Santa Fe, and the Southern Pacific. It is at the terminus of a branch line of the Santa Fe extending south from Ash Fork, Ariz., 194 miles, but California traffic over the Santa Fe is handled over a branch line, known as the Parker cut-off, extending from Cadiz, Calif., to Wickenburg, Ariz., a point on the Ashford-Phoenix branch, approximately 74 miles north of Phoenix. At the time of the hearings traffic from California [10] moving over the Southern Pacific reached Phoenix over the former Arizona Eastern Railroad, which connects with the main line of the Southern Pacific at Maricopa, Ariz., 35 miles south of Phoenix. Since the hearings the Southern Pacific has opened its new line from Wellton, Ariz., to Phoenix. The distances over this new line are 25 miles shorter than via Maricopa. From Los Angeles and San

Francisco the present distances to Phoenix are, respectively, 489 and 800 miles over the Santa Fe and 426 and 896 miles over the Southern Pacific.

Kingman, Williams, Flagstaff, Winslow, Holbrook, and Gallup are on the main line of the Santa Fe. Clarkdale is at the terminus of a branch line of the Santa Fe, 38 miles in length which extends from Drake, Ariz., a point 21 miles south of Ash Fork on the Maricopa-Phoenix line.

Yuma, Tucson, and Bowie are on the main line of the Southern Pacific. Safford and Globe are on a branch line of that carrier extending from Bowie. Clifton is on a branch line of the same carrier extending from Lordsburg. Bisbee and Douglas are served by the so-called southern lines of the Southern Pacific, formerly the El Paso & Southwestern.

The California points of production extend from San Francisco on the north to Los Angeles on the south. They include San Francisco and Crockett, the only two points at which Hawaiian cane sugar is refined, as well as all points at which beet sugar is produced. All California refining points take the same rates to Arizona destinations.

In Maier & Co. v. Southern Pacific Co., 29 I. C. C. 103, decided January 6, 1914, a rate on sugar from Los Angeles and Los Alamitos, Calif., to Benson, Ariz., of 60 cents, minimum 36,000 pounds, was prescribed. This was the contemporaneous rate to El Paso, a point more distant than Benson on the same line. The 60-cent rate was established generally to main-line Southern Pacific and Santa Fe

points in Arizona and New Mexico, and the San Francisco rate was made 10 cents higher.

In Fourth Section Violations in Rates on Sugar, 31 I. C. C. 511, we denied authority to continue rates on sugar from San Francisco and other sugar-producing points in California to Trinidad, Colo., and other points east thereof, which were lower than the rates concurrently applicable on like traffic to intermediate points on the line of the Santa Fe, and also denied authority to the Southern Pacific, El Paso & Southwestern, and Chicago, Rock Island & Pacific to continue lower rates on sugar from the points of production described to the Missouri River than the rates concurrently applicable to intermediate points west of Tucumcari, N. Mex. In addition [11] to making substantial reductions in the rates in connection with the minimum of 36,000 pounds, the carriers on November 15, 1914, established rates, with a minimum of 60,000 pounds, from all California producing points to practically all Arizona points on a basis 5 cents lower than the rates from Los Angeles to the same destinations upon the lower minimum.

In Arizona Corporation Commission v. A., T. & S. F. Ry. Co., 34 I. C. C. 158, the rates from California to Phoenix and Prescott were found to be unreasonable to the extent that they exceeded the rates to the main-line junction points by more than 5 cents. As a result, on May 1, 1916, the rates from California to Phoenix and Prescott became 60 cents, minimum 60,000 pounds, and 65 cents, minimum 36,000 pounds. On June 25, 1918, the main-line

rates were increased 25 per cent to 69 and 75 cents, respectively, and the Phoenix and Prescott rates became 75 and 81.5 cents. Subsequently a flat increase of 22 cents was substituted for the percentage increase and the rates to main-line points became 77 and 82 cents on November 25, 1919, and to Phoenix and Prescott 82 and 87 cents on February 18, 1920.

On February 29, 1920, the carriers canceled the rates to main-line and branch-line points under the lower minimum weight published in connection with roads under Federal control and, as to such roads, increased the Phoenix and Prescott rate under the minimum of 60,000 pounds to 83.5 cents. This cancellation, as to nonfederal lines, was found justified in Sugar from California Points to Arizona, 58 I. C. C. 737.

On August 26, 1920, the rates on sugar from California, minimum 60,000 pounds, became 96.5 cents to main-line points and $1.045 to Phoenix and Prescott. In Phoenix Chamber of Commerce v. Director General, 62 I. C. C. 412, decided June 22, 1921, the Phoenix rate was found unreasonable to the extent that it exceeded 96.5 cents, and reparation was awarded on that basis. On June 27, 1921, the carriers reduced the main-line rates to 96 cents, and on September 17, 1921, that rate was established to both Phoenix and Prescott. All of these rates were reduced on July 1, 1922, to 86.5 cents.

In United Verde Mining Co. v. A., T. & S. F. Ry. Co., 88 I. C. C. 5, the rates on classes and commodities, including sugar, from California, among

other origin territories, to Clarkdale were found unreasonable to the extent that they exceeded the contemporaneous rates to Drake, and on October 16, 1922, the rate on sugar from California to Clarkdale was reduced from $1.16 to 86.5 cents.

In Sugar Cases of 1922, 81 I. C. C. 448, fourth-section relief authorized in Fourth Section Violations in Rates on Sugar, supra, permitting lower rates to Chicago, Ill., and other points in the Middle [12] West, than to intermediate points, was withdrawn. In the revision following this decision the rate to Chicago, minimum 80,000 pounds, became 84 cents, and this rate was established at intermediate points, including Gallup and main-line Southern Pacific and Santa Fe points in Arizona, but in connection with a minimum of 60,000 pounds. The same rate and minimum were established to Phoenix, Prescott, and Clarkdale.

In our original report in No. 14449 we again considered the rate from California points to Phoenix and found it to have been and to be unreasonable to the extent that it exceeded 79 and 71 cents, respectively, prior and subsequent to July 1, 1922. Reparation was awarded on that basis. The 71-cent rate was established to Phoenix and to intermediate points on the Southern Pacific and on the route of the Santa Fe over the Parker cut-off, effective February 25, 1925. In our original report in No. 14140, Solomon-Wickersham Co. v. S. M. V. R. R. Co., 101 I. C. C. 667, reopened and here before us on argument, the rate on sugar from California points to Bowie was found to have been and to be unreason-

able to the extent that it exceeded 83 and 75 cents, respectively, before and after July 1, 1922. Reparation was awarded on that basis. The reduced rate was established to Bowie and to Tucson, an intermediate point, effective October 27, 1925. The reduction to Bowie was 9 cents, and on the date named the Southern Pacific made reductions of the same amount to Safford and Globe, resulting in rates of 80.5 and 85.5 cents, respectively. No change was made in the Clifton rate of 94.5 cents.

Summarized, the present rates, minimum 60,000 pounds, are 71 cents to Yuma and Phoenix, 75 cents to Tucson and Bowie, 80.5 cents to Safford, 84 cents to Kingman, Williams, Flagstaff, Winslow, Holbrook, Prescott, Clarkdale, Bisbee, Douglas, and Gallup, 85.5 cents to Globe, and 94.5 cents to Clifton.

The general transportation conditions from California to Arizona are fully discussed in the cases cited and also in Arizona Corporation Commission v. A. E. R. R. Co., 113 I. C. C. 52, and will not be further discussed here. The latter case has since been reopened. In Arizona Cattle Growers Asso. v. A. Ry. Co., 101 I. C. C. 181, division 4 approved of prescribed rates on cattle, in carloads, from points in Arizona to points in California which were approximately 20 per cent higher than the corresponding rates for like distances in Oklahoma and Texas. The same level of rates was approved or prescribed in that case from branch-line as from main-line points in Arizona.

In Nos. 16742, 16770, and 16770 (Sub-Nos. 1 to 9) counsel asks reparation on shipments to Phoenix on

the basis of 71 cents, and contends that rates to the other destinations should be graded like [13] the rate to Bowie prescribed in the first report in No. 14149, or else that there should be reasonable groupings. In Nos. 17549, 17549 (Sub-No. 1), and 17466 counsel contends that the origin group should be divided into two parts, the first to include Los Angeles, Dyer, Los Alamitos, San Pedro, and Oxnard, and the second San Francisco, Betteravia, Spreckles, Tracy, Alvarado, and Crockett. The principal counsel in the latter cases is also counsel for complainants in No. 16770 (Sub-Nos. 6, 7, and 8). The rates now suggested from the proposed southern group are 54 cents to Phoenix, Tucson, and Clarkdale, 59 cents to Bisbee, and 64 cents to Clifton, and rates 10 cents higher from the proposed northern group.

The rate of 71 cents to Phoenix prescribed in the original report in No. 14449 was based on a distance of 625 miles, which is approximately one-half of the sum of the short-line distances from Los Angeles and San Francisco. Reference was made in that report to the fact that under the distance scale on sugar prescribed in Memphis-Southwestern Investigation, 77 I. C. C. 473, for application in the general territory comprising Louisiana west of the Mississippi River, Arkansas, and southern Missouri, the rate for 625 miles is 58 cents. The rate of 71 cents prescribed is about 121 per cent of 58 cents. The rates proposed by complainants are lower than 121 per cent of the Memphis-Southwestern scale, and in justification thereof complainants point to the fact

that the minimum weight prescribed in connection with that scale is 36,000 pounds, as compared with 60,000 pounds under the rates assailed. In Oklahoma Traffic Asso. v. A. G. S. R. R. Co., 113 I. C. C. 635, the Memphis-Southwestern scale was prescribed on sugar from New Orleans, La., and points in Louisiana taking the same rates, and from Sugarland and Texas City, Tex., to points in Oklahoma, subject to a minimum of 60,000 pounds.

Defendants are opposed to a disturbance of the origin grouping and to grading of rates at destination. They contend that because of the competitive situation the present origin and destination groupings are of advantage to producers and distributors of sugar. However, if the rates are to be graded at destination they favor breaking up the origin blanket into two groups. Defendants subscribe to a basis of rates from California to Arizona which is about 121 per cent of the rates for the same distances under the Memphis-Southwestern scale, provided that the rates to Arizona points are based upon the weighted-average haul.

As stated, the only California points at which cane sugar is refined are San Francisco and Crockett. The southern California distributors of beet sugar stock a limited amount of cane sugar in order to fill orders for mixed carloads containing certain varieties of sugar [14] not obtainable at beet-sugar refineries. The production of beet sugar in California during 1925 was as follows:

Producing Point	Quantity
	Tons
Dyer	9,095
Los Alamitos	2,010
Oxnard	15,310
Betteravia	18,559
Spreckles	30,066
Tracy	8,297
Alvarado	9,580
Total	92,917

The production at the southern California points of Dyer, Los Alamitos, and Oxnard was 28.43 per cent of the total production for the State during 1925. In addition there was a substantial movement of sugar by water to San Pedro, Calif.

During the past several years, due to blight, drought, and the use for other purposes of land formerly planted in beets, there has been a substantial diminution in the amount of beet sugar produced in southern California and, as a consequence, a reduction in the number of refineries. The following table, giving movements from California refineries on the Southern Pacific to destinations in Arizona and New Mexico and to El Paso, shows that there has been a substantial reduction, both in the volume of movement from southern California to the territory of destination described and in the ratio such tonnage bears to the tonnage from northern California:

	Northern California			Southern California		
	Cars	Tons	Per cent	Cars	Tons	Per cent
Year 1921	187	5,920	24	265	8,519	76
Year 1922	188	5,920	39.4	265	8,423	70.6
Year 1923	247	7,754	72.9	67	2,129	27.1
Year 1924	313	9,856	86	44	1,415	14
Year 1925	504	15,615	95.5	23	714	4.5

In addition to the above there were shipments of sugar from San Francisco over the Santa Fe to destinations on its own line west of Albuquerque. In 1925 they amounted to 107 cars, weighing 3,029 tons. This additional tonnage changes the percentages for 1925 to 96.3 per cent from northern California and 3.7 per cent from southern California. Of the total of 611 cars from northern California, 227 moved from San Francisco and 370 from Crockett. The weight of the shipments from these two points aggregated 18,490 tons. Only 14 cars moved from other northern California points, of which 11 moved from Spreckles and 3 from Betteravia.

We have upon this record no serious contention from producers, distributors, or consumers that a breaking up of the present exten- [15] sive origin and destination groupings would be detrimental to their interests. Bearing in mind the length of time during which the present California group has existed and the fact that until recent years the movement has been substantial from both northern and southern California, we do not find that group as such to have been or to be unreasonable; but in view

of the fact that most of the movement now is from two of the most distant points of shipment, an origin group approximately 500 miles in length is no longer justified. A more reasonable adjustment for the future would seem to require the breaking up of the origin territory into two groups, the northern group extending from San Francisco and Crockett on the north to Spreckles on the south, and the southern group extending from Betteravia on the north to Dyer on the south.

Since the hearings in these cases we have decided Consolidated Southwestern Cases, 123 I. C. C. 203, in which new distance scales of rates were prescribed for application on classes and commodities generally throughout the Southwest. The scale on sugar prescribed in those cases, hereinafter referred to as the southwestern scale, is 30 per cent of the first-class rates therein prescribed and will apply in connection with a minimum weight of 60,000 pounds. The following table shows the average short-line distances from the southern and northern groups to points or groups of destination and compares the rates proposed by certain of complainants with rates on basis of 120 per cent of the southwestern scale for like distances:

	From southern group			From northern group		
	Distance	Complainants' proposed rates	120% of southwestern rates	Distance	Complainants' proposed rates	120% of southwestern rates
	Miles	Cents	Cents	Miles	Cents	Cents
From Group 1 to Yuma, Ariz.	267	40	45.5	637	50	72
From Group 2 to Kingman, Ariz.	388	47	56.5	645	57	73
From Group 3 to Phoenix, Ariz.	467	55	61	749	65	79
From Group 4 to—						
Tucson, Ariz.	519	.....	.....	847	.....	.....
Prescott, Ariz.	526	.....	.....	782	.....	.....
Williams, Ariz.	527	.....	.....	783	.....	.....
Flagstaff, Ariz.	561	.....	.....	818	.....	.....
Clarkdale, Ariz.	563	.....	.....	820	.....	.....
Group average	539	55	65	810	65	83
From Group 5 to—						
Winslow, Ariz.	619	.....	.....	876	.....	.....
Bisbee, Ariz.	628	.....	.....	956	.....	.....
Bowie, Ariz.	634	.....	.....	961	.....	.....
Douglas, Ariz.	643	.....	.....	971	.....	.....
Holbrook, Ariz.	652	.....	.....	909	.....	.....
Group average	635	59	72	935	69	89
From Group 6 to—						
Safford, Ariz.	674	60	74.5	1,001	70	92.5
From Group 7 to—						
Gallup, N. Mex.	747	.....	.....	1,004	.....	.....
Clifton, Ariz.	753	.....	.....	1,081	.....	.....
Globe, Ariz.	758	.....	.....	1,085	.....	.....
Group average	752	64	79	1,057	74	95

No. 16670 (Sub-No. 7) brings in issue the reasonableness of the rates from Colorado and Kansas refineries to Gallup, and contains a prayer for reparation on shipments subsequent to March 31, 1923. Prior to June 25, 1918, the rate on sugar from transcontinental Group E, which includes New Orleans, to Pacific coast points was 85 cents, minimum 60,000 pounds, and this rate applied as maximum from Kansas and Colorado points. The general increases and reduction resulted in rates from Colorado and Kansas, respectively, to Arizona points on the Santa Fe of $1.195 and $1.28, the difference resulting from general increases of 25 and 33 1/3 per cent, respectively, from Colorado and Kansas on August 26, 1920. At the time of the hearing the fifth-class rate of $1.145 was applicable on sugar from Colorado refineries to Gallup. At that time a commodity rate of 75 cents applied from Colorado points to Albuquerque, and on August 1, 1925, the present commodity rate of 84 cents, minimum 60,000 pounds, was established from the same points to Gallup. The present rate to Albuquerque is 76 cents, and the same rate applies from Denver and Pueblo, Colo., to El Paso. To Fort Worth, Tex., the rate is 72 cents, minimum 36,000 pounds.

The record fails to show any movement, actual or prospective, from Kansas, and the rates from that State will not be further considered.

The Colorado points of origin are shown by complainant as including Denver, Fort Collins, Greeley, Holly, Lamar, Longmont, Loveland, Las Animas, Lupton, Rocky Ford, Swink, and Windsor. The Santa Fe, which is the only carrier serving the Colorado group named as defendant herein, carries

rates to points on its line in Arizona and New Mexico only from Holly, Lamar, Las Animas, Rocky Ford, and Swink. The average distance from the group to Gallup is shown by complainants as 625 miles. Complainant in No. 16670 (Sub-No. 7) showed only seven shipments from Colorado to Gallup since March 31, 1923, six from Swink, and one from Rocky Ford.

The rates herein prescribed under section 1 will remove any undue prejudice which may exist in the rates assailed, and no findings with respect to the allegations under section 3 are necessary.

The evidence shows that all of the complainants, except the C. N. Cotton Company, made or received shipments of sugar as described, and paid and bore the charges thereon.

Defendants call attention to the fact that in our original report in No. 14449 we awarded reparation on shipments which moved to Phoenix on a rate 0.5 cent less than the rate prescribed as reasonable by us from and to the same points in Phoenix Chamber of Com- [17] merce v. Director General, supra, referred to as the First Phoenix case, and that the period of reparation in the former case extended back approximately four months prior to the date when the latter case was decided. Defendants contend that they should not be required to pay reparation on shipments which moved under rates approved or prescribed by us. We have several times announced that the doctrine of res adjudicata is not applied by us. Goss v. Director General, 73 I. C. C. 649. We reserve the right,

upon a more comprehensive record, to modify our previous findings, whether in the same or a previous case, upon matters directly in issue before us as to which it clearly appears that our previous findings would not accord substantial justice under the laws which we administer. We have such a case here. For the first time the record before us is comprehensive in the evidence which it contains bearing upon the reasonableness of the rates assailed. Upon this record we reach the conclusion that the rate prescribed in the first Phoenix case, during the period embraced in these complaints, was unreasonable and that a lower rate would have been reasonable during that period. If we are within our authority in finding that a lower rate would have been reasonable, then it must follow that shippers who paid the freight charges at the higher rate paid charges which were unreasonable, and are entitled to reparation upon adequate proof that they paid or bore such charges.

We find that the assailed rate, minimum 60,000 pounds, from Holly and other Santa Fe points in Colorado grouped therewith to Gallup was, is, and will be unreasonable to the extent that it exceeded, exceeds, or may exceed 72 cents. We further find that the assailed rates, minimum 60,000 pounds, from California points were, are, and will be unreasonable to the extent that they exceeded, exceed, or may exceed, respectively, the following, in cents per 100 pounds:

Prior to July 1, 1922, to Phoenix 79 cents from the Southern California group and 81 cents from the northern California group and to Bowie 83

cents from the southern California group and 93 cents from the northern California group; on and between July 1, 1922, and the effective date of the rates herein prescribed for the future, from the southern California group and the northern California group, respectively, *66* and 66 cents to Yuma, 68 and 69 cents to Kingman, 71 and 73 cents to Phoenix, 73 and 77 cents to Prescott, Williams, Tucson, Flagstaff, and Clarkdale, 75 and 84 cents to Winslow, Holbrook, Bisbee, Bowie, and Douglas, 77 and 87 cents to Safford, and 79 and 89 cents to Gallup, Clifton, and Globe; and for the future as follows: [18]

To—	From southern California group	From northern California group
	Cents	Cents
Yuma, Ariz.	46	66
Kingman, Ariz.	57	69
Phoenix, Ariz.	61	73
Tucson, Ariz.	65	77
Prescott, Ariz.	65	77
Williams, Ariz.	65	77
Flagstaff, Ariz.	65	77
Clarkdale, Ariz.	65	77
Winslow, Ariz.	72	84
Bisbee, Ariz.	72	84
Bowie, Ariz.	72	84
Douglas, Ariz.	72	84
Holbrook, Ariz.	72	84
Safford, Ariz.	75	87
Gallup, N. Mex.	79	89
Clifton, Ariz.	79	89
Globe, Ariz.	79	89

We further find that complainants, except the C. N. Cotton Company, made shipments as described at the rates herein found to have been unreasonable; that they paid and bore the charges thereon and were damaged thereby in the amount of the difference between the charges paid and those which would have accrued at the rates herein found to have been reasonable; and that they are entitled to reparation, with interest. Complainants should comply with Rule V of the Rules of Practice. No reparation orders have been issued in Nos. 14449 and 14140, and complainants in those cases should submit to the carriers new statements in compliance with Rule V referred to.

Our original order in No. 14449 and the order of division 3 in No. 14140 will be modified in conformity with the foregoing conclusions, and appropriate orders for the future will be entered in other cases disposed of in this report.

TAYLOR, Commissioner, concurring in part:

I dissent from so much of this report as finds the rates unreasonable in the past and awards reparation.

COMMISSIONER PORTER did not participate in the disposition of this case. [19]

ORDERS.

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 12th day of March, A. D. 1928

No. 16770

Bashford-Burmister Company

v.

The Atchison, Topeka & Santa Fe Railway Company; Southern Pacific Company; Pacific Electric Railway Company; Santa Maria Valley Railroad Company; and Bay Transport Company

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No. 16770 (Sub-No. 1)

Central Commercial Company

v.

Same

No. 16770 (Sub-No. 2)

Wheeler Perry Company

v.

Santa Maria Valley Railroad Company and Southern Pacific Company

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No. 16770 (Sub-No. 3)

T. F. Miller Company

v.

The Atchison, Topeka & Santa Fe Railway Company; Southern Pacific Company; Pacific Electric Railway Company; Santa Maria Valley Railroad Company; and Bay Transport Company

No. 16770 (Sub-No. 4)

E. F. Sanguinetti

v.

Southern Pacific Company; Pacific Electric Railway Company; Santa Maria Valley Railroad Company; and Bay Transport Company [20]

No. 16770 (Sub-No. 5)

Arizona Grocery Company

v.

The Atchison, Topeka & Santa Fe Railway Company; Southern Pacific Company; Pacific Electric Railway Company; Santa Maria Valley Railroad Company; and Bay Transport Company

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No. 16770 (Sub-No. 6)

Arizona Wholesale Grocery Company

v.

Arizona Eastern Railroad Company; Pacific Elcetric Railway Company; Santa Maria Valley Railroad Company; and Southern Pacific Company

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No. 16770 (Sub-No. 7)

C. N. Cotton Company

v.

The Atchison, Topeka & Santa Fe Railway Company; Pacific Electric Railway Company; Rio Grande, El Paso and Santa Fe Railroad Company; Santa Maria Valley Railroad Company; and Southern Pacific Company

No. 16770 (Sub-No. 8)

Babbitt Brothers Trading Company; Arizona Stores Company; Babbitt Brothers Company; and Babbitt Brothers

v.

Same

No. 16770 (Sub-No. 9)

Wm. H. Dagg Mercantile Company

v.

The Atchison, Topeka & Santa Fe Railway Company; Southern Pacific Company; Pacific Electric Railway Company; Santa Maria Valley Railroad Company; and Bay Transport Company

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No. 17549

Phelps Dodge Mercantile Company

v.

The Atchison, Topeka & Santa Fe Railway Company; El Paso & Southwestern Railroad Company; Pacific Electric Railway Company; Santa Maria Valley Railroad Company; and Southern Pacific Company [21]

No. 17549 (Sub-No. 1)

Baffert & Leon

v.

The Atchison, Topeka & Santa Fe Railway Company; Pacific Electric Railway Company; Santa Maria Valley Railroad Company; and Southern Pacific Company

No. 17466

United Verde Extension Mining Company

v.

Same

No. 17781

Simpson-Ashby Company

v.

Southern Pacific Company

These cases being at issue upon complaints, as amended, and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That the above-named defendants, according as they participate in the transportation, be, and they are hereby, notified and required to cease and desist, on or before June 11, 1928, and thereafter to abstain, from publishing, demanding, or collecting rates for the transportation of sugar, in carloads, from points in California to points in Arizona, referred to in the next succeeding paragraph hereof, and to Gallup, N. Mex., and from points in Colorado, referred to in the second succeeding paragraph hereof, to Gallup, which shall exceed the rates hereinafter prescribed.

It is further ordered, That said defendants, according as they participate in the transportation, be,

and they are hereby, notified and required to establish, on or before June 11, 1928, upon notice to this commission and to the general public by not less than 15 days' filing and posting in the manner prescribed in section 6 of the interstate commerce act, and thereafter to maintain and apply to the transportation of sugar, in carloads, from the following California groups, as defined in the report made a part hereof, to the Arizona and New Mexico destinations named below, rates, minimum weight 60,000 pounds, which shall not exceed the following, in cents per 100 pounds: [22]

To—	From southern California group	From northern California group
	Cents	Cents
Yuma, Ariz.	46	66
Kingman, Ariz.	57	69
Phoenix, Ariz.	61	73
Tucson, Ariz.	65	77
Prescott, Ariz.	65	77
Williams, Ariz.	65	77
Flagstaff, Ariz.	65	77
Clarkdale, Ariz.	65	77
Winslow, Ariz.	72	84
Bisbee, Ariz.	72	84
Bowie, Ariz.	72	84
Douglas, Ariz.	72	84
Holbrook, Ariz.	72	84
Safford, Ariz.	75	87
Gallup, Ariz.	79	89
Clifton, Ariz.	79	89
Globe, Ariz.	79	89

It is further ordered, That said defendants in No. 16670 (Sub-No. 7), according as they participate in the transportation, be, and they are hereby, notified and required to establish, on or before June 11, 1928, upon notice to this commission and to the general public by not less than 15 days' filing and posting in the manner prescribed in section 6 of the interstate commerce act, and thereafter to maintain and apply to the transportation of sugar, in carloads, from Holly, Lamar, Rocky Ford, and Swink, Colo., and other points on the Atchison, Topeka & Santa Fe Railway in Colorado taking the same rates, to Gallup, N. Mex., a rate which shall not exceed 72 cents per 100 pounds, minimum weight 60,000 pounds.

And it is further ordered, That these orders shall continue in force until the further order of the commission.

SUPPLEMENTAL ORDERS

No. 14449

Traffic Bureau of the Phoenix Chamber of Commerce; Haas-Baruch & Company; Hall-Pollock Company; The Melczer Company; and James A. Dick Company

v.

The Atchison, Topeka & Santa Fe Railway Company; Southern Pacific Company; Pacific Electric Railway Company; Santa Maria Valley Railroad Company; and Arizona Eastern Railroad Company

No. 14140

Solomon-Wickersham Company

v.

Santa Maria Valley Railroad Company and Southern Pacific Company

These cases having been reopened for oral argument jointly with No. 16742, Traffic Bureau of the Phoenix Chamber of Commerce et al. v. A., T. & S. F. Ry. Co. et al., and cases consolidated therewith, and such oral argument having been had, and the commission having, on the date hereof, made and filed a new report containing its find- [23] ings of fact and conclusions thereon, which said report, together with the previous reports herein, 95 I. C. C. 244 and 101 I. C. C. 667, are hereby referred to and made a part hereof:

It is ordered, That the order entered in No. 14449 on January 6, 1925, and the order entered in No. 14140 on July 17, 1925, be, and they are hereby, modified so that the second and third paragraphs thereof will read, respectively, as follows:

It is ordered, That the above-named defendants in No. 14449, according as they participate in the transportation, be, and they are hereby, notified and required to cease and desist, on or before June 11, 1928, and thereafter to abstain, from publishing, demanding, or collecting rates for the transportation of sugar, in carloads, from points in California to Phoenix, Ariz., which shall exceed the rates prescribed in the next succeeding paragraph hereof.

It is further ordered, That said defendants, according as they participate in the transportation, be,

and they are hereby, notified and required to establish, on or before June 11, 1928, upon notice to this commission and to the general public by not less than 15 days' filing and posting in the manner prescribed in section 6 of the interstate commerce act, and thereafter to maintain and apply to the transportation of sugar, in carloads, rates to Phoenix, Ariz., minimum weight 60,000 pounds, which shall not exceed 61 cents per 100 pounds from points in the southern California group, as defined in the report of this date made a part hereof, and 73 cents per 100 pounds from points in the northern California group, as defined in the said report.

It is ordered, That the above-named defendants in No. 14140, according as they participate in the transportation, be, and they are hereby, notified and required to cease and desist, on or before June 11, 1928, and thereafter to abstain, from publishing, demanding, or collecting rates for the transportation of sugar, in carloads, from points in California to Bowie, Ariz., which shall exceed the rates prescribed in the next succeeding paragraph hereof.

It is further ordered, That said defendants, according as they participate in the transportation, be, and they are hereby, notified and required to establish, on or before June 11, 1928, upon notice to this commission and to the general public by not less than 15 days' filing and posting in the manner prescribed in section 6 of the interstate commerce act, and thereafter to maintain and apply to the transportation of sugar, in carloads, rates to Bowie, Ariz., minimum weight 60,000 pounds, which shall

not exceed 72 cents per 100 pounds from the southern California group, as defined in the report of this date made a part hereof, and 84 cents per 100 pounds from the northern California group, as defined in the said report.

And it is further ordered, That these supplemental orders shall continue in force until the further order of the commission.

By the commission.

[Seal] GEORGE B. McGINTY,
Secretary.

A true copy:
GEORGE B. McGINTY,
Secretary. [24]

EXHIBIT "B"

M NO. 50 [illegible] OF BAFFERT & LEON UNDER THE DECISION OF THE INTERSTATE COMMERCE COMMISSION IN DOCKET NO. 17[illegible] SUB. 1 COVERING SHIPMENTS OF SUGAR ORIGINATING AT CROCKETT AND OAKLAND, CALIFORNIA DESTINED TUCSON, ARIZONA.

ROUTING: SOUTHERN PACIFIC DIRECT.

Date of Shipment	Date of Delivery or Tender of Delivery	Date Charges Paid	Car Initials	Car Number	Weight	As Checked Rate	As Checked Charges	Should Be Weight	Should Be Rate	Should Be Charges	Remarks: Reduction on account of the Commission's Decision
Feb. 17, 1925	Feb. 25, 1925	Feb. 26, 1925	SOU	167154	60,531	84	508.46	60,531	77	466.09	42.37
March 22, 1925	March 26, 1925	March 26, 1925	SP	238051	60,480	75	453.45	60,480	75	441.38	12.09
April 24, 1925	April 27, 1925	April 28, 1925	SP	239261	60,450	75	453.38	60,450	73	441.29	12.09
July 17, 1925	July 21, 1925	July 22, 1925	SP	167761	60,469	84	507.94	60,469	73	441.42	66.52
May 6, 1924	May 1 8,1924	May 14, 1 924	GHSA	3[illegible]956	60,507	84	508.26	60,507	77	465.90	42.36
Sept. 18, 1924	Aug. 19, 1924	Aug. 20, 1924	SP	845151	60558	84	50889	60558	77	466.30	42.59
Feb 4, 1925	Feb. 9, 1925	Feb. 11, 1925	SP	852361	60,527	84	508.43	60527	77	466.06	42.37
Feb. 27, 1925	March 4, 1925	Mar ch 4, 1925	SP	2[illegible]7191	60,593	84	508.86	60,593	77	466.57	42.29
March 14, 1925	March 20, 1925	March 21, 1925	SP	168041	60,491	84	508.12	60,491	77	465.78	42.34
Mar ch 31, 1925	April 3, 1925	April 8, 1925	TP	34239	60,509	84	508.28	60,509	77	466.92	42.36
April 21, 1925	April 27, 1925	April 30, 1925	SP	8[illegible]672	60,553	84	508.65	60,553	77	466.26	42.39
May 2, 1925	May 8, 1925	May 13, 1925	SP	288502	60,534	84	508.49	60,534	77	466.11	42.38
May 15, 1925	May 20, 1925	May 23, 1925	GHSA	38838[illegible]	60,486	84	508.08	60,486	77	465.74	42.34
June 10, 1925	June 16, 1925	June 17, 1925	SP	278955	60,525	84	508.41	60,525	77	466.04	42.37
June 26, 1925	July 1, 1925	July 3, 19 25	CS	12883[illegible]	60,517	84	508.34	60,517	77	465.98	42.36
Aug 4, 1925	Aug. 10, 1925	Aug. 12, 1925	SP	305181	60,534	84	508.49	60,534	77	466.11	42.38
Aug. 19, 1925	Aug. 24, 1925	Aug. 26, 1925	CMSTP	79798[illegible]	60,520	84	508.37	60,520	77	466.00	42.37
Sept. 10, 1925	Sept. 15, 1925	Sept. 16, 1925	SP	295811	60,553	84	508.65	60,553	77	466.26	42.39
TOTAL							$9,041.47			$8,315.19	725.28

The undersigned hereby certifies that this statement has been checked against the records of this company and found correct shipments moving prior to September 1925 to be certified correct only as shown by attached freight bills, other records destroyed.

Date [illegible]

THE SOUTHERN PACIFIC RAILROAD COMPANY,
Collecting Carrier, Defendant.

By _____
Auditor of Freight Bills.

Aud.

Baffert & Leon
Tucson, Arizona

By: CHAS. E. BLAINE,
Commerce Counsel,
417-423 Home Builders,
Phoenix, Arizona
June 16, 1926

not exceed 72 cents per 100 pounds from the southern California group, as defined in the report of this date made a part hereof, and 84 cents per 100 pounds from the northern California group, as defined in the said report.

And it is further ordered, That these supplemental orders shall continue in force until the further order of the commission.

By the commission.

[Seal] GEORGE B. McGINTY,
Secretary.

A true copy:

GEORGE B. McGINTY,
Secretary. [24]

...M NO. ...
...SUB. ...SSION IN DOCKET NO. 19545
DESTINED TUCSON, ARIZONA.

Date of Shipment	Charges	Weight	Should Be Rate	Should Be Charges	Reparation on basis of the Commission's Decision
17,					
22,	8.48	60,531	77	466.09	42.37
24,	3.45	60,480	75	441.36	12.09
17,	3.38	60,450	73	441.29	12.09
6,	7.94	60,469	73	441.42	66.52
18,	8.26	60,507	77	465.90	42.36
4,	869	60558	77	466.30	42.39
27,	8.43	60527	77	466.06	42.37
14,	8.98	60,593	77	466.57	42.41
31,	8.12	60,491	77	465.78	42.34
21,	8.28	60,509	77	465.92	42.36
2,	5.65	60,553	77	466.26	42.39
15,	8.49	60,534	77	466.11	42.38
10,	8.08	60,486	77	465.74	42.34
26,	8.41	60,526	77	466.04	42.37
4,	8.34	60,517	77	465.98	42.36
19,	8,49	60,534	77	466.11	42.38
10,	8.37	60,520	77	466.00	42.37
...RD.....	8.65	60,553	77	466.26	42.39
	1.47			$8,315.19	$726.28

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THE SOUTHERN ...
Co... BLAINE,
...ce Counsel,
By ...3 Home Builders,
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March 25, 1929.

State of Arizona,
County of Pima.—ss.

I, F. J. Baffert, Co-Partner of the firm of Baffert & Leon, Tucson, Arizona, do solemnly swear that I have reviewed the eighteen (18) freight bills as listed on Rule V statement as rendered by Mr. Chas. E. Blaine, Commerce Counsel, with his claim No. 5058 of Baffert & Leon under the decision of the Interstate Commerce Commission in Docket No. 17549, Sub 1, covering shipments of sugar originating at Crockett, and Oxnard, California destined Tucson, Arizona.

Furthermore, that Baffert & Leon paid and bore the freight charges shown thereon.

F. J. BAFFERT.

State of Arizona,
County of Pima.—ss.

Subscribed and sworn to before me this 29th day of March, 1929.

J. H. BAFFERT
Notary Public, Pima County, State of Arizona.
My Commission expires: Aug. 25th, 1930. [27]

EXHIBIT "C"

ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 7th day of September A. D. 1929.

No. 17549

Phelps Dodge Mercantile Company

v.

The Atchison, Topeka & Santa Fe Railway Company, et al.

No. 17549 (Sub-No. 1)

Baffert & Leon

v.

Same

It appearing, That on March 12, 1928, the commission entered its report in the above-entitled proceeding, which report is hereby referred to and made a part hereof, and this proceeding now coming on for further consideration on the question of reparation, and the parties having filed agreed statements with respect to the shipments in question, showing, among other things, the dates on which payment of the charges assailed was made; we find that complainants shown in the following table are entitled to awards of reparation from the defendants named below in the amounts set opposite their respective names, with interest.

Complainants	Defendants	Amounts
Phelps Dodge Mercantile Company	Southern Pacific Company and El Paso & Southwestern Railroad Company	$2510.46
Do	Southern Pacific Company	891.43
T. J. Baffert and A. S. Leon, copartners, trading under the firm name of Baffert & Leon	Southern Pacific Company	726.28

It is therefore ordered, That the defendants, named in each of the groups shown in the above table, be, and they are hereby authorized and directed to pay unto the complainants shown opposite said groups, on or before October 22, 1929, the amounts set opposite their respective names in said table, with interest thereon at the rate of six per cent per annum, from the respective dates of payment of the charges assailed shown in the aforesaid agreed statements, as reparation on account of unreasonable rates charged for the transportation of numerous carloads of sugar from California points to destinations in Arizona, and from California and Colorado points to Gallup, N. Mex.

By the commission.

GEORGE B. McGINTY,

(Seal Interstate Commerce Commission) Secretary.

A true copy:

GEORGE B. McGINTY,
Secretary. [28]

[Endorsed]: Filed Feb 7 1930. [29]

In the District Court of the United States,
in and for the District of Arizona.

L 844 Phx

AT LAW

WHEELER-PERRY COMPANY, a corporation,
Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY, a corporation, and SANTA MARIA VALLEY RAILROAD COMPANY, a corporation,
Defendants.

COMPLAINT.

for reparations on freight charges

Plaintiff by its attorneys, Elliott and Snell, complains of the defendants and for its cause of action alleges:

I.

That at all times hereinafter mentioned plaintiff was a corporation, organized under the laws of the State of Arizona and qualified to do business in said State of Arizona.

II.

That at all times hereinafter mentioned the defendants, Southern Pacific Company and Santa Maria Valley Railroad Company, were and now are railroad corporations engaged in the operation of railroads and railroad lines for the transportation of freight and interstate commerce, and the Santa Maria Valley Railroad Company is a connecting

carrier with the said defendant Southern Pacific Company, and between which there was an agreement for a joint line, and arrangements for a continuous carriage of interstate shipments over their respective lines.

III.

That between the 14th day of September, 1923 and the 1st day of May, 1928 there was shipped by the above named plaintiff to Tucson, Arizona, over the lines of said defendants and entered Tucson over the lines of the said Southern Pacific Company twenty-three (23) carloads of sugar; that the shipments [32] originated at Betteravia, Oxnard, Crockett, and San Francisco, California, as shown on Exhibit "A" attached hereto and made a part hereof.

IV.

That the said defendant Southern Pacific Company charged this plaintiff and this plaintiff was compelled to and did pay the said Southern Pacific Company, upon all of said shipments from said points in California, from the 14th day of September, 1923 to the 1st day of May, 1928, inclusive, the following freight charges, to wit:

For a shipment made on September 14, 1923 from Betteravia, California, 86½ cents per hundred pounds;

For a shipment made on October 13, 1923, as shown on Exhibit "A" attached hereto and made a part hereof, 86½ cents per hundred pounds;

For a shipment made on April 28, 1928, as shown on Exhibit "A" attached hereto and made a part hereof, 75 cents per hundred pounds;

For shipments made between February 27, 1923 and December 28, 1923, inclusive, from Crockett and San Francisco, California, 86½ cents per hundred pounds;

For shipments made between January 24, 1924 and July 13, 1925, inclusive, from Crockett and San Francisco, California, 84 cents per hundred pounds;

all as will more particularly appear from Exhibit "A" attached hereto and made a part hereof; that all of said shipments were made on through bills of lading, from said points of origin to said point of destination, and that the said freight charges as above set forth per hundred pounds were and are unreasonable, as to this plaintiff, and a violation of the Interstate Commerce Act of February 4, 1887, and Acts of Congress amendatory thereto, and that the just and reasonable freight rates which should have been charged on all of said shipments from said points of origin in California to said point of destination in [33] Arizona after the 1st day of July, 1922 was 73 cents per hundred pounds from Oxnard and Betteravia and 77 cents per hundred pounds from Crockett and San Francisco, California.

V.

That prior to the filing of this complaint plaintiff filed its petition and complaint with and before

the Interstate Commerce Commission of the United States, alleging that the rates and charges on all of said shipments from said points of origin in California to said point of destination in Arizona were unjust and unreasonable, as to the plaintiff, and that thereafter the above named defendants filed their answer with and before the Interstate Commerce Commission, said cause being docketed under Docket No. 16770.

VI.

That the said Interstate Commerce Commission made, issued and filed its findings of fact on the 12th day of March, 1928; that said Commission found that said rates of 75 cents, 84 cents and 86½ cents per hundred pounds as above set forth on said shipments from said points of origin in California to said point of destination in Arizona were unreasonable, as to the plaintiff, to the extent that they exceeded a rate and charge of 73 cents per hundred pounds from Betteravia and Oxnard, California and 77 cents per hundred pounds from Crockett and San Francisco, California on and after July 1, 1922, and said Commission and said report and findings found that the plaintiff herein was entitled to reparations on said shipments from said points of origin in California to said point of destination in Arizona, and to interest thereon; and that said report and said findings of said Commission are duly reported and recorded in 140 I. C. C. 171; that said Commission required and directed that said complainant should comply with Rule V of the

rules and regulations of the Interstate Commerce Commission, which rule required a statement of the shipments and dates on which charges therefor were paid: the car initials and numbers; the points of origin; the routes over which the shipments moved; the weights of shipments; the rates charged; the amount collected; the rates which [34] should have been charged; the amount which should have been collected; and the differences between the charges existing and those which would have accrued upon the basis of rates found reasonable by the Commission; that in pursuance of said requirements of the Interstate Commerce Commission the plaintiff herein did, on or about the 28th day of June, 1928, properly certify a statement under said rule and transmitted same to the defendant Southern Pacific Company, and same was thereafter certified to by the Southern Pacific Company and was thereafter transmitted by the Southern Pacific Company to the Interstate Commerce Commission; a copy of which statement is attached hereto marked Exhibit "A" and made a part hereof.

VII.

Thereafter and on the 13th day of April, 1931 the Interstate Commerce Commission duly made and published its order directing and requiring the defendants herein to pay unto said plaintiff, Wheeler-Perry Company, the following sums, to wit:

Santa Maria Valley Railroad Company	$ 81.60
Southern Pacific Company	1,090.09

together with interest thereon at the rate of six per

cent (6%) per annum from the respective dates of payment of the charges shown on Exhibit "A" attached hereto and made a part hereof, the said sums to be paid on or before the 28th day of May, 1931, said reparations being on account of the unreasonable rates charged for the transportation of certain carload shipments of sugar from points in California to Tucson, Arizona, as will more particularly appear from the copy of said order hereto attached marked Exhibit "B" and made a part hereof.

VIII.

That said defendants have failed and refused to pay said reparation or any part thereof, either of principal or interest, though request and demand has been made heretofore by the plaintiff on the defendants for the payment of said reparation. [35]

IX.

That by reason of said unreasonable rates and charges and the payment thereof by the plaintiff, and by reason of the refusal of said defendants to pay said reparations awarded by the Interstate Commerce Commission, the plaintiff has been damaged in the sum of One Thousand One Hundred Seventy-one and 69/100 Dollars ($1,171.69), together with interest thereon at the rate of six per cent (6%) per annum from the respective dates of payment of the charges as shown in Exhibit "A" attached hereto and made a part hereof, no part of which has ever been paid.

X.

That the sum of Seven Hundred Fifty Dollars ($750.00), which is reasonable attorneys' fees, may be allowed by the court in this action.

WHEREFORE, plaintiff demands judgment in its favor and against the defendants for the sum of One Thousand One Hundred Seventy-one and 69/100 Dollars ($1,171.69), together with interest thereon from the respective dates of payment as above set forth and as herein contained, together with Seven Hundred Fifty Dollars ($750.00) as attorneys' fees, and for plaintiff's costs and disbursements in this action; and plaintiff prays that process may issue herein.

ELLIOTT & SNELL,
Attorneys for Plaintiff. [36]

CLAIM NO. 5180 OF THE WHEELER PERRY COMPANY UNDER THE DECISION OF THE INTERSTATE [illegible] IN DOCKET NO. 18770 (SUB 2) COVERING SHIPMENT OF SUGAR ORIGINATING AT [illegible], CUBA DESTINED TUCSON, ARIZONA ROUTED SANTA MARIA VALLEY RAILROAD COMPANY-- SOUTHERN PACIFIC COMPANY.

Date of Shipment	Date of Delivery or tender of Delivery	Date Charges Paid	Car Initials	Car Number	Weight	As Charged Rate	As Charged Charges	Weight	Should Be Rate	Should Be Charges	Explanation on basis of Commission's Decision
Sept. 14, 1933	Sept. 16, 1933	Sept. 17, 1933	SP	35346	80450	86½	$538.89	80.50	75	$502.69	$81.80

The undersigned hereby certifies that this statement has been checked against the records of this company and found correct.

Date

SANTA MARIA VALLEY RAILROAD COMPANY,
Collecting Carrier, Defendant,

By: [signature]

Concurred in:

SOUTHERN PACIFIC COMPANY,

By: _____

WHEELER PERRY COMPANY,
Tucson, Arizona.

By: [signature illegible]
Counsel,
417-423 Huse Builders' Bldg.
Phoenix, Arizona.
June 28, 1935.

EXHIBIT "A"

X.

That the sum of Seven Hundred Fifty Dollars ($750.00), which is reasonable attorneys' fees, may be allowed by the court in this action.

WHEREFORE, plaintiff demands judgment in its favor and against the defendants for the sum of One Thousand One Hundred Seventy-one and 69/100 Dollars ($1,171.69), together with interest thereon from the respective dates of payment as above set forth and as herein contained, together with Seven Hundred Fifty Dollars ($750.00) as attorneys' fees, and for plaintiff's costs and disbursements in this action; and plaintiff prays that process may issue herein.

ELLIOTT & SNELL,
Attorneys for Plaintiff. [36]

CLAIM NO. 8121 OF WHEELER-PERRY COMPANY UNDER THE DECISION OF THE INTERSTATE COMMERCE COMMISSION IN DOCKET NO. 16770 (SUB 2) COVERING SHIPMENTS OF SUGAR CONSIGNED AT ONLAND, CROCKETT, AND SAN FRANCISCO, CALIFORNIA DESTINED TUCSON, ARIZONA ROUTED SOUTHERN PACIFIC COMPANY.

Date of Shipment	Date of Delivery or tender of Delivery	Date Charges Paid	Car Initials	Car Number	As Carried Weight	As Carried Rate	As Carried Charges	SHOULD BE Weight	SHOULD BE Rate	SHOULD BE Charges	Reparation on basis of Commission's Decision
Oct. 13, 1923	Oct. 17, 1923	Oct. 23, 1923	SP	[illegible]	80488	83½	$583.03	80488	73	$441.48	$81.84
April 28, 1923	May 1, 1923	May 4, 1923	SP	88005	80750	75	485.83	80750	73	443.43	14.15
July 9, 1925	July 13, 1925	July 14, 1925	GH	34807	80817	64	509.15	80817	73	442.50	66.68
Jan. 24, 1924	Jan. 28, 1924	Jan. 29, 1924	PFE	13015	81078	64	513.03	81078	77	470.31	42.75
March 11, 1924	March 17, 1924	March 20, 1924	SLSF	1405511	80848	64	517.91	80848	77	473.91	44.01
June 6, 1924	June 11, 1924	June 12, 1924	GHSA	38872	80853	64	509.45	80853	77	534.23	46.57
Aug. 19, 1924	Aug. 25, 1924	Aug. 27, 1924	SP	80208	80853	64	509.45	80853	77	487.03	42.45
Sept. 25, 1924	Oct. 1, 1924	Oct. 2, 1924	SP	88038	81733	64	513.98	81733	77	475.73	43.25
Feb. 6, 1925	Feb. 10, 1925	Feb. 11, 1925	IRCT	80482	80959	64	512.06	80959	77	486.36	42.66
April 18, 1925	April 24, 1925	April 27, 1925	SP	08801	81737	64	513.33	81737	77	475.14	43.19
May 12, 1925	May 18, 1925	May 20, 1925	UP	73887	81518	64	513.73	81518	77	473.67	43.06
Feb. 27, 1923	March 5, 1923	March 8, 1923	IC	31742	80450	66½	532.69	80450	77	485.47	57.42
April 5, 1923	April 9, 1923	April 10, 1923	GHSA	34244	81109	66½	529.77	81109	77	470.89	58.88
May 11, 1923	May 17, 1923	May 18, 1923	GHSA	37330	85570	66½	567.16	85570	77	504.89	62.29
June 18, 1923	June 25, 1923	June 26, 1923	IC	8289389	80973	66½	537.42	80973	77	488.49	57.93
Aug. 8, 1923	Aug. 14, 1923	Aug. 15, 1923	SP	18189	80711	66½	525.13	80711	77	487.47	57.68
Sept. 12, 1923	Sept. 18, 1923	Sept. 21, 1923	SP	18673	80530	66½	523.58	80530	77	487.08	57.50
Dec. 22, 1923	Dec. 28, 1923	Dec. 31, 1923	GHSA	37700	80397	66½	535.43	80397	77	465.08	57.37
Nov. 1, 1924	Nov. 7, 1924	Nov. 10, 1924	SP	80650	81815	64	519.36	81815	77	475.93	43.27
Jan. 12, 1925	Jan. 17, 1925	Jan. 20, 1925	MP	10885	81539	64	518.93	81539	77	473.55	43.06
March 5, 1925	March 10, 1925	March 12, 1925	SP	88485	80710	64	509.98	80710	77	487.47	42.49
June 8, 1925	June 13, 1925	June 15, 1925	MTC	5918	80763	64	510.85	80763	77	488.03	42.55
TOTAL					11,481.40					$10,371.31	$1,090.09

The undersigned hereby certifies that this statement has been checked against the records of this company and found correct; shipments moving prior to September 1923 are certified as correct only as shown by the attached freight bills; other records destroyed.

Sept 17 1923
Date

SOUTHERN PACIFIC COMPANY,
Collecting Carrier, Defendant

By: _____, Agent.

WHEELER-Perry COMPANY,
Tucson, Arizona.

By: CHAS. E. BLAINE,
Commerce Counsel,
417-423 Home Builders' Bldg.,
Phoenix, Arizona.
June 26, 1926.

March 25, 1929.

State of Arizona,
County of Pima.—ss.

I, L. A. Lohse, Manager for Wheeler-Perry Company, Tucson, Arizona, do solemnly swear that I have reviewed the twenty-three (23) freight bills as listed on Rule V statement by Chas. E. Blaine, Commerce Counsel, with his claims Nos. 5120 and 5121 for Wheeler-Perry Company, Tucson, Arizona, under the decision of the Interstate Commerce Commission in Docket No. 16770, Sub. 2, covering shipments of sugar originating at Betteravia, Oxnard, Crockett and San Francisco, California, destined Tucson, Arizona.

Furthermore, that Wheeler-Perry Company paid and bore the charges shown thereon.

L. A. LOHSE,
Manager.

State of Arizona,
County of Pima.—ss.

Subscribed and sworn to before me this 26th day of March, 1929.

NEVA P. CLAY,
Notary Public,
Pima County, State of Arizona.

My Commission expires March 30, 1930. [39]

EXHIBIT "B"

No. 16770

It appearing, That on March 12, 1928, the commission entered its report in the above-entitled proceedings, which report is hereby referred to and made a part hereof, and these proceedings now coming on for further consideration on the question of reparation, and the parties having filed agreed statements with respect to the shipments in question, showing among other things, the dates on which payment of the charges assailed was made; we find that complainants shown in the following table are entitled to awards of reparation from the defendants named below in the amounts set opposite their respective names, with interest.

Complainants	Defendants	Amounts
Bashford-Burmister Company	AT&SF	$2,554.40
Do	SP and AT&SF	170.15
Do	BT and AT&SF	146.58
The Central Commercial Company	AT&SF	959.48
Do	SP and AT&SF	1,438.21
Do	BT and AT&SF	459.54
Wheeler Perry Company	SMV	81.60
Do	SP	1,090.09
T. F. Miller Company	AT&SF	2,089.15
Do	SP and AT&SF	199.46
E. F. Sanguinetti	SP	2,367.57
Do	SMV and SP	123.92
Arizona Grocery Company	AT&SF	298.36
Do	SP and AT&SF	340.18
Do	BT and AT&SF	85.05
Solomon Wickersham Company	SP	472.99
Do	SP and AE	1,717.32
Arizona Wholesale Grocery Company	SP	317.22
Do	SP and AE	2,707.78
Babbitt Brothers Company	SP and AT&SF	1,938.45
Do	SMV; SP and AT&SF	62.50
Do	AT&SF	1,240.02
Arizona Stores Company	AT&SF	656.02
Do	SP and AT&SF	678.35
Wm. H. Dagg Mercantile Company	SP and AT&SF	100.14
Do	BT and AT&SF	15.12

It is therefore ordered, That the defendants, named in each of the groups shown in the above table, be, and they are hereby, authorized and directed to pay unto the complainants shown opposite said groups, on or before May 28, 1931, the amounts set opposite their respective names in said

table, with interest thereon at the rate of six per cent per annum, from the respective dates of payment of the charges assailed shown in the aforesaid agreed statements, as reparation on account of unreasonable rates charged for the transportation of numerous carloads of sugar from California points to destinations in Arizona.

By the commission.

[Seal] GEORGE B. McGINTY,
Secretary.

Index of Abbreviations

AT&SF	The Atchison, Topeka and Santa Fe Railway Company
AE	Arizona Eastern Railroad Company
BT	Bay Transport Company
SP	Southern Pacific Company
SMV	Santa Maria Valley Railroad Company

[40]

[Endorsed]: Filed Sep. 10, 1931. [41]

[Title of Court and Cause—No. L-738-Phx.]

Action brought in said District Court, and the Complaint filed in the office of the Clerk of said District Court, in the City of Phoenix and County of Maricopa.

The President of the United States of America
To Southern Pacific Company, Defendant:

YOU ARE HEREBY DIRECTED TO APPEAR, and answer the Complaint in an action en-

titled as above, brought against you in the District Court of the United States, in and for the District of Arizona, within twenty days after the service on you of this Summons—if served within this County; or within thirty days if served elsewhere.

AND YOU ARE HEREBY NOTIFIED that unless you appear and answer as above required, the said Plaintiff will take judgment for any money or damages demanded in the Complaint, as arising upon contract, or they will apply to the Court for any other relief demanded in the Complaint.

WITNESS: The Honorable F. C. Jacobs, Judge of said District Court, this 7th day of February, in the year of our Lord one thousand nine hundred and thirty and of our Independence the one hundred and fifty-fourth.

[Seal] C. R. McFALL, Clerk.
By Archie L. Gee, Deputy Clerk.

United States Marshal's Office
District of Arizona.

I HEREBY CERTIFY that I received the within writ on the 7th day of February, 1930 and personally served the same on the 8th day of February, 1930, upon Southern Pacific Company, a corporation by delivering to, and leaving with W. C. Heim, Freight Agent for said corporation at Phoenix, Arizona. Said defendant named therein personally, at the ..... County of Maricopa in said District, a certified copy thereof, together with

a copy of the Complaint, certified to by ..... attached thereto.

February 8th, 1930.

G. A. MAUK, U. S. Marshal.

By John Deubler, Deputy.

[Endorsed]: Filed February 10, 1930. [42]

[Title of Court and Cause—No. L-844-Phx.]

Action brought in said District Court, and the Complaint filed in the office of the Clerk of said District Court, in the City of Tucson and County of Pima.

The President of the United States of America

To Southern Pacific Company, a corporation,

Defendant:

YOU ARE HEREBY DIRECTED TO APPEAR, and answer the Complaint in an action entitled as above, brought against you in the District Court of the United States, in and for the District of Arizona, within twenty days after the service on you of this Summons—if served within this County; or within thirty days if served elsewhere.

AND YOU ARE HEREBY NOTIFIED that unless you appear and answer as above required, the said Plaintiff will take judgment for any money or damages demanded in the Complaint, as arising upon contract, or it will apply to the Court for any other relief demanded in the Complaint.

WITNESS: The Honorable ALBERT M. SAMES, Judge of said District Court this 10th day of September, in the year of our Lord one thousand nine hundred and thirty-one and of our Independence the one hundred and fifty-sixth.

[Seal] J. LEE BAKER, Clerk.
By Edward W. Scruggs,
Chief Deputy Clerk.

United States Marshal's Office
District of Arizona.

I HEREBY CERTIFY that I received the within writ on the 10th day of Sept., 1931 and personally served the same on the 11th day of Sept., 1931, upon S. P. Co. by delivering to, and leaving with Vernon L. Clark, Statutory Agent for the S. P. Co. Said defendant named therein personally, at the Phoenix, County of Maricopa in said District, a certified copy thereof, together with a copy of the Complaint, certified to by J. Lee Baker, Clerk U. S. Dist. Court attached thereto.

September 11th, 1931.

G. A. MAUK, U. S. Marshal.
By T. W. Hunt, Office Deputy.

Elliott & Snell,
Heard Building,
Phoenix, Arizona,
Plaintiff's Attorney.

[Endorsed]: Filed Sep. 14, 1931. [43]

[Title of Court and Cause—No. L-738]

MINUTE ENTRY OF MONDAY, SEPTEMBER 26, 1932.

Upon motion of Alexander B. Baker, Esquire of counsel for the defendant, and with the consent of Samuel White, Esquire, of counsel for plaintiffs,

IT IS ORDERED that the defendants be allowed to file an Amended Answer to Plaintiff's Complaint. [44]

[Title of Court and Cause No. L-738-Phx.]

AMENDED ANSWER TO COMPLAINT

Now comes the defendant in the above entitled action and by leave of the Court first had and obtained, files this, its amended answer to the complaint on file therein, wherein and whereby said defendant admits, alleges, and denies as follows:

I.

Admit the allegations of paragraphs I, II, III, and VII of said complaint.

II.

Answering paragraph IV of said complaint, defendant denies that said Interstate Commerce Commission at any time found that said rates of 84 cents, and/or 75 cents per 100 pounds, as referred to in said paragraph, were or was unjust and/or unreasonable, and/or excessive as to said plaintiffs, or in any other respect, either to the extent alleged or to any extent whatsoever, and denies further

that said rates, and/or the freight charges accruing thereunder, or either or any of them, were or was or are or is in fact unjust and/or unreasonable, and/or in violation of the Interstate Commerce Act, or otherwise or in any manner unlawful; but defendant admits that said Commission undertook to find [45] whether said rates had been unreasonable and/or unjust and/or excessive to the extent that they exceeded 77 cents per 100 pounds, upon shipments originating at Crockett, California, and 73 cents per 100 pounds, upon shipments originating at Oxnard, California, and destined to Tucson, Arizona; admits further that said Commission undertook to find that said plaintiffs were entitled to reparation upon their said shipments moving under said rates from and to said points of origin and destination; but defendant alleges that said report and/or findings of said Commission, and each thereof, as to each and all of said shipments of said plaintiffs which had been made and delivered prior to the rendition and issuance of said report and/or findings, were and was and are and is beyond the jurisdiction of said Commission and void, as is hereinafter more particularly set forth.

III.

Answering paragraph V of said complaint, defendant admits that, substantially as alleged in said paragraph, said Commission undertook to require and direct said plaintiffs herein to comply with Rule V of its Rules of Practice; admits further that said plaintiffs undertook to prepare statements

purporting to show, with respect to each of the plaintiffs' said shipments, the information required by said Rule V; admits that said statements were thereafter transmitted to the defendant; but denies that the same were thereafter certified by said defendant; denies further that the copies of said statements which are annexed to and form Exhibit B to the complaint on file herein, are correct, insofar as the same undertake to set forth any liability whatsoever for reparation, on the part of said defendant.

IV.

Answering paragraph VI of said complaint, defendant admits that, substantially as alleged in said paragraph, said Commission undertook to make an order of the character described in said [46] paragraph; but defendant alleges that said purported order was and is in all respects beyond the jurisdiction of said Commission and without statutory authority and void, as is hereinafter more particularly set forth.

V.

Answering paragraph VIII of said complaint, defendant denies that by reason of said alleged unjust and/or unreasonable and/or excessive rates and/or charges, or by reason of the refusal of defendants to pay said reparation, or otherwise, plaintiffs have been damaged, either in the sum of $726.28, or any other sum or amount mentioned in said complaint, either with interest or otherwise; or

that said plaintiffs have otherwise been damaged, in any other or different sum or sums whatsoever.

VI.

Answering paragraph IX of said complaint, defendant denies that the sum of $300.00 or any other sum whatsoever, is or would be a reasonable attorney's fee to be allowed in this action.

VII.

Defendant further shows and alleges that said purported order of said Interstate Commerce Commission, referred to in paragraph VI of said complaint, insofar as it authorizes, directs and/or commands the payment of reparation upon the plaintiffs' said shipments, was and is beyond the power and jurisdiction of said commission, and without any statutory warrant or authority whatsoever; and in this behalf defendant alleges that the rates which were charged and collected upon plaintiffs' said shipments, as set forth in said complaint, had previously been formally approved, and declared to be reasonable, by said Commission, and/or were less in amount than rates which had been specifically approved and declared by said Commission to be reasonable, after formal investigation; and that said approved rates remained in full force and effect, subject only, in certain instances, to changes [47] ordered, directed and/or approved by the Director-General of Railroads and/or said Commission itself, during all times mentioned in the complaint before the Commission and in the complaint on file herein; that said rates were applied upon plaintiffs' said

shipments, and were charged and collected, pursuant to the authority and approval of said Commission; and that each and all of said rates, and/or the charges thereunder accruing upon plaintiffs' said shipments, was and were and is and are just, and reasonable, and in full conformity with all of the requirements of the Interstate Commerce Act.

WHEREFORE, defendant prays:

(1) That the Court order judgment to be entered, against said plaintiffs, and in favor of defendant, dismissing said complaint;

(2) That defendant be allowed its costs herein incurred;

(3) For such other, further and different relief as may be proper in the premises.

Dated September 23, 1932.

BAKER & WHITNEY,
Attorneys for Defendant.

JAMES E. LYONS,
BURTON MASON,
Of Counsel. [48]

State of California,
City and County of San Francisco.—ss.

G. L. KING, being first duly sworn, deposes and says:

That he is Assistant Secretary of Southern Pacific Company, a corporation, the defendant in the above entitled proceeding, and makes this verification for and on behalf of said defendant; that he has read the foregoing amended answer and knows the contents thereof, and the same is true of his own

knowledge, except as to the matters which are therein stated on information and belief, and as to those matters, he believes the same to be true.

G. L. KING.

Subscribed and sworn to before me this 23d day of September, 1932.

[Seal] FRANK HARVEY,
Notary Public, in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed Sept. 26, 1932. [49]

[Title of Court and Cause No. L-844-Phx.]

DEFENDANTS' ANSWER TO COMPLAINT.

The defendants in the above-entitled cause, for their joint and several answer to the complaint of the plaintiff on file therein, admit, allege and deny as follows:

I.

Admit the allegations of paragraphs I, II, III, V, and VIII of said complaint.

II.

Answering paragraph IV of said complaint, defendants admit that freight charges were assessed upon the several shipments of the plaintiff referred to in said paragraph IV, and in said Exhibit A, annexed to said complaint, in the amounts and at the legal tariff rates set forth therein; admit further that said shipments were made upon through

bills of lading from said points of origin in California to said destination point, Tucson, Arizona; but defendants deny that said rates, and/or freight charges, accruing thereunder, or either or any of them, were or was or are or is unreasonable, either as to the plaintiff or otherwise, and/or in violation of the Interstate Commerce Act, or otherwise or in any manner unlawful; deny further that the just and/or reasonable freight rate which should have been charged upon any or all of said shipments, from any or all of said points of origin to said [50] destination, was or should have been 73 cents per 100 pounds, upon shipments from Oxnard and/or Betteravia, California, and/or 77 cents per 100 pounds, upon shipments from Crockett and San Francisco, California, as alleged in said complaint, or any other sum or amount less than the duly published rates actually and legally applied thereon, as hereinbefore set forth.

III.

Answering paragraph VI of said complaint, defendants deny that said Interstate Commerce Commission at any time found that said rates, or either or any of them, were or was unreasonable, as to the plaintiff or otherwise, either to the extent alleged or to any extent whatsoever; but defendants admit that, substantially as alleged in said paragraph, said Interstate Commerce Commission undertook to find whether said rates had been unreasonable to the extent they, or either of them, exceeded 73 cents per 100 pounds, upon shipments originating at Oxnard

and Betteravia, California, and 77 cents per 100 pounds, upon shipments originating at Crockett and San Francisco, California, and moving to Tucson, Arizona; but defendants allege that said finding and/or findings of said Commission, and each of them, as to each and all of plaintiff's shipments which had been made and delivered prior to the rendition and issuance thereof, was and were beyond the jurisdiction of said Commission, and void and of no effect whatsoever, as is hereinafter more particularly set forth.

IV.

Answering paragraph VII of said complaint, defendants admit that, substantially as alleged in said paragraph, the Interstate Commerce Commission undertook to make an order of the character set forth in said paragraph VII; but defendants allege that said order was and is altogether void and unenforceable, for the reason that said Commission is wholly without jurisdiction in the premises, as is hereinafter more particularly set forth. [51]

V.

Answering paragraph IX of said complaint, defendants deny that by reason of said alleged unreasonable rates and/or charges, and/or the payment thereof by the plaintiff, and/or by reason of the refusal of the defendants to pay said reparation, or otherwise, plaintiff has been damaged either in the sum of $1171.69, or any sum mentioned in said complaint, either with or without interest, or that

plaintiff has otherwise been damaged in any other sum or amount whatsoever.

VI.

Answering paragraph X of said complaint, defendants deny that the sum of $750.00, or any other sum whatsoever, is or would be a reasonable attorney's fee to be allowed to the plaintiff by the court herein.

VII.

Defendants further show and allege that said purported order of said Interstate Commerce Commission, referred to in paragraph VII of said complaint, insofar as it authorizes, directs or commands the payment of reparation upon plaintiff's said shipments, was and is beyond the power and jurisdiction of said Commission, and without any statutory warrant or authority whatsoever, for the reason that the rates which were applied and assessed upon plaintiff's said shipments, had previously been established and/or approved, and declared to be reasonable, by said Commission itself, pursuant to formal investigation, and/or were less in amount than rates which had thus been approved and/or declared to be reasonable by said Commission; that said rates, as thus approved and/or declared reasonable, remained in effect, subject only to changes ordered, directed, and/or approved by the Director-General of Railroads, and/or said Commission itself, and to certain voluntary reductions made by said defendants, during all the times mentioned in said complaint on file herein; and that said rates

[52] were applied and assessed upon plaintiff's said shipments pursuant to the authority and approval of said Commission.

WHEREFORE, defendants respectfully pray the court to order judgment entered against said plaintiff, and in favor of said defendants, dismissing said complaint; that defendants have their costs of suit herein incurred; and that the court grant such other and further relief as may be meet and proper in the premises.

DATED: May 20th, 1932.

BAKER & WHITNEY
Attorneys for Defendants.

JAMES E. LYONS
BURTON MASON
Of Counsel. [53]

State of California,
City and County of San Francisco—ss.

G. L. KING, being first duly sworn, deposes and says:

That he is Assistant Secretary of Southern Pacific Company, a corporation, one of the defendants in the above entitled proceeding, and makes this verification for and on behalf of said defendants; that he has read the foregoing answer and knows the contents thereof, and the same is true of his own knowledge, except as to the matters which are therein stated on information and belief, and as to those matters, he believes the same to be true.

G. L. KING.

Subscribed and sworn to before me this 20th day of May, 1932.

[Seal] FRANK HARVEY,
Notary Public.
In and for the City and County of San Francisco, State of California.

Receipt of copy of the within and foregoing Answer to Complaint is acknowledged this 24th day of May, 1932.

ELLIOTT & SNELL.

[Endorsed]: Filed May 24, 1932. [54]

[Title of Court and Cause—No. L-738-Phx.]

WAIVER OF JURY TRIAL.

IT IS HEREBY STIPULATED AND AGREED, by and between the parties to this cause that a jury trial shall be waived, and that the case shall be tried before a judge of this court without the aid or intervention of a jury.

Dated this 26th day of September, 1932.

SAMUEL WHITE,
Attorney for Plaintiffs.
BAKER & WHITNEY,
Attorneys for Defendant.

[Endorsed]: Filed Sep. 26, 1932. [55]

[Title of Court and Cause—No. L-844-Phx.]

WAIVER OF JURY.

Comes now the above named plaintiff and defendants by their respective attorneys, and waive a jury in the above entitled cause.

Dated this 22nd day of September, 1932.

ELLIOTT & SNELL,
Attorneys for Plaintiff.
BAKER & WHITNEY,
Attorneys for Defendants.

[Endorsed]: Filed Sep. 23, 1932. [56]

[Title of Court and Cause—No. L-738-Phx.]

REQUEST FOR FINDINGS OF FACT AND CONCLUSIONS OF LAW.

Now comes the plaintiffs above-named, by its attorney, Samuel White, and hereby requests the court to make the following findings of fact and conclusions of law in this action.

Dated this 1st day of February, 1933.

SAMUEL WHITE,
Attorney for Plaintiffs. [57]

[Title of Court and Cause—No. L-738-Phx.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW.

This cause coming on for trial at the regular term of said court, and on the 11th day of October, 1932, and having been tried before the court, a jury having been legally waived by the respective parties hereto, plaintiffs apparing by their attorney, Samuel White, and the defendant appearing by its attorneys, Baker and Whitney, Chalmers, Fennemore and Nairn, James E. Lyons, Burton Mason and Gerald E. Duffy; and the parties hereto having agreed and stipulated that this cause would be consolidated for purposes of trial with certain other causes pending in this court, and being numbered and docketed as follows, to-wit: L-844 Phoenix; and said parties having further stipulated and agreed that the evidence introduced in said causes so consolidated for purposes of trial would apply to each of said cases so consolidated; and the respective parties herein having offered both oral and documentary evidence in support of their respective pleadings herein, and the trial of said matters having been concluded on the 13th day of October, 1932, and the court, pursuant to stipulation of the [58] parties, on the 17th day of January, 1933, having heard oral testimony offered by the respective parties hereto as to the matter of attorney's fees to be allowed plaintiff's attorney; and the court having been duly requested by the parties hereto to make,

enter and file special findings of fact and conclusions of law in said causes prior to rendering judgment; and the court having considered said evidence and said argument of counsel, and being fully advised in the premises, does hereby make and find the following as its findings of fact and conclusions of law, constituting the decision of the court in this action.

FINDINGS OF FACT.

I.

That plaintiffs are, and at all times hereinafter mentioned were, co-partners doing business in the State of Arizona under the firm name of Baffert and Leon.

II.

That at all times mentioned in plaintiffs' complaint the defendant, Southern Pacific Company, a corporation, was, and now is, a railroad corporation, engaged in the operation of railroad lines for transportation of freight in interstate commerce, and

III.

That between the 17th day of February, 1925, and the 10th day of September, 1925, inclusive, there was shipped by the plaintiffs, F. J. Baffert and A. S. Leon, over the lines of the defendant, Southern Pacific Company, 18 carload shipments of sugar; that said shipments originated at Crockett and Oxnard, in the State of California, and were destined to the plaintiffs at Tucson, in the State of Arizona; that said shipments are severally and collectively set forth in plaintiffs' Exhibit "B" [59] attached

to plaintiffs' complaint filed herein, to which reference is hereby made the same as if said exhibit, and the contents thereof, were a part of these findings of fact, and which exhibit correctly shows in detail the points of origin and the point of destination; the dates upon which said shipments were made; the dates upon which the charges for transportation thereof were paid; the car initials and numbers in which said shipments were loaded and transported; the weights of said shipments; the rates charged and the amount collected thereon; the rates and amounts subsequently found by the Interstate Commerce Commission to be reasonable and which should have been charged, and the difference between the rates charged and the rates which said commission found should have been charged, said last mentioned amounts being the amount of reparation claimed by the plaintiff and allowed by said commission, with respect to each of said shipments.

IV.

That the defendant, Southern Pacific Company, charged plaintiffs, F. J. Baffert and A. S. Leon, and said plaintiffs were compelled to, and did, pay to said defendant on all said shipments from said points of origin in California to said point of destination in Arizona, between said dates, freight charges in the sum of 84 cents and 75 cents per hundred pounds; that all of said shipments were made on true bills-of-lading from said points of origin to said point of destination.

V.

That the plaintiff, prior to the commencement of this action, filed its petition and complaint with and before the Interstate Commerce Commission of the United States, alleging that the rates and charges on the above mentioned shipments [60] were unjust and unreasonable as to the plaintiff, and that thereafter the defendant filed its answer with and before said commission, said matter being docketed before said commission under Docket No. 17549 (Sub-No. 1).

VI.

That said Interstate Commerce Commission issued and filed its findings of fact in said matter on the 12th day of March, 1928, which findings are reported in Vol. 140 I. C. C. Page 171; that said commission found that said rates of 84¢ and 75¢ per hundred pounds charged and collected by said defendant on said shipments from said points of origin to said point of destination was unreasonable as to the plaintiffs to the extent that they exceeded a rate and charge of 77¢ and 73¢ per hundred pounds from and after July 1, 1922, up to and including the 10th day of September, 1925; that said commission further found in said findings that the plaintiff had been damaged in the amount of the difference between the said rates paid by plaintiffs and the rate found by said commission in said proceedings to have been reasonable, and that plaintiffs were entitled to reparation therefor on all said shipments, with interest thereon.

VII.

That the plaintiffs have duly complied with all the requirements of said Interstate Commerce Commission as to the proof necessary for the amount of said reparation.

VIII.

That on the 7th day of September, 1929, said Interstate Commerce Commission, in Docket No. 16742 and causes consolidated therewith, including said Docket No. 17549 (Sub-No. 1) duly made and published its order, directing and requiring the defendant herein to pay to the plaintiffs herein the [61] sum of Seven Hundred Twenty-six and 28/100 ($726.28) Dollars, together with interest thereon at the rate of six per cent per annum from the respective dates of payment of the charges collected by the defendant from plaintiffs, said sum to be paid on or before the 22nd day of October, 1929; said sum being the amount of reparation on account of said unreasonable rates charged and collected by said defendant for transportation of said 18 carload shipments of sugar.

IX.

That the defendant failed and refused to comply with said order to pay said reparation, or any part thereof, though request was made by the plaintiffs upon said defendant for payment of same.

X.

That said freight rates charged and collected, as aforesaid, were unjust, unreasonable and excessive

as to said plaintiffs, and in violation of the Interstate Commerce Act of February 4, 1885, and Acts of Congress amendatory thereof.

XI.

That the just and reasonable freight rate which should have been charged on all said 18 carload shipments from said Crockett and Oxnard, in the State of California, to said Tucson, Arizona, from and after July 1, 1922, and up to and including the 10th day of September, 1925, was 77 cents per hundred pounds.

XII.

That by reason of the said unreasonable rates and charges, and the payment thereof by plaintiffs, and by reason of the refusal of the defendants to pay said reparation in pursuance of said order made by said commission, plaintiffs have been damaged by said defendant in the sum of $726.28 [62] together with interest thereon at the rate of six per cent per annum from the respective dates of payment, as shown on Exhibit "B", attached to plaintiffs' complaint, down to and including the 22nd day of October, 1929, amounting to the sum of $191.95, together with interest at the rate of six per cent per annum on the total sum of principal and interest, to-wit: $918.23, from said 22nd day of October, 1929, until paid.

XIII.

That plaintiff herein has been compelled to employ an attorney-at-law to prosecute the present

action to collect said reparation so awarded by said commission, and that 20% of the total amount found due, including principal and interest, is a reasonable sum to be allowed as attorney's fees.

CONCLUSIONS OF LAW.

I.

That said order of the Interstate Commerce Commission dated September 7, 1929, made and entered in that certain proceeding before said commission, entitled Traffic Bureau of Phoenix Chamber of Commerce, et al, vs. Atchison, Topeka & Santa Fe Railway Company, et al, Docket No. 16742, and causes consolidated therewith, including Docket No. 17549 (Sub-No. 1) which said order required said defendant to pay to the plaintiffs herein certain sums of money as set forth in said order and in plaintiffs' complaint, was, and is, a legal, valid and binding order and was made and entered by said Interstate Commerce Commission in said cause, and was within the power and jurisdiction conferred on said Interstate Commerce Commission in said cause by law, and that in the making of said order said commission acted within its jurisdiction and power. [63]

II.

That the rates of 84¢ and 75¢ per hundred pounds charged the plaintiffs by the defendant from Crockett and Oxnard, California, to Tucson, Arizona, between the February 17, 1925, and September 10, 1925, inclusive, on said 18 carload shipments of

sugar, as shown on Exhibit "B", attached to plaintiffs' complaint, was found by the Interstate Commerce Commission, in said proceedings, Docket No. 16742, and causes consolidated therewith, including Docket No. 17549 (Sub. No. 1) unreasonable to the extent that said rates exceeded 77¢ from northern California points, originating at Crockett, and a rate of 73¢ from southern California point, originating at Oxnard to said point of destination at Tucson, Arizona, and that the reasonable rates which should have been charged the plaintiffs on account of said shipments over defendant's lines, during said period, was 77¢ from Crockett, California and 73¢ from Oxnard, California, per hundred pounds to said point of destination at Tucson, Arizona.

III.

That by reason of said unreasonable charges the plaintiffs have been damaged and the defendant, Southern Pacific Company, is indebted to the plaintiffs in the sum of $726.28, together with interest thereon at the rate of six per cent per annum from the respective dates of payment of said charges, as shown on said exhibit "B", attached to plaintiffs' complaint down to and including the 22nd day of October, 1929, amounting to the sum of $191.95, and interest on said total sum of principal and interest, to-wit: $918.23, from said 22nd day of October, 1929, until paid; said principal and interest amounting to the sum of $....., as of this date, and the further [64] sum of 20% of the total amount of said

indebtedness, including principal and interest, as and for attorney's fees, amounting to the sum of $....., and said defendant became and is indebted to the plaintiffs in said total sum of principal and interest, and attorney's fees of $..... together with plaintiffs' costs and disbursements herein expended, and that plaintiffs are entitled to judgment therefor.

Dated this ..... day of February, 1933.

.....

Judge.

Received Copy of the Within documents this 1st day of February, 1933.

BAKER & WHITNEY and
LAWRENCE L. HOWE,
Attorney for .....

[Endorsed]: Filed Feb. 1, 1933. [65]

[Title of Court and Cause—No. L-844-Phx.]

REQUEST FOR FINDINGS OF FACT AND CONCLUSIONS OF LAW.

Now comes the plaintiff above mentioned, by its attorneys Elliott and Snell, and hereby requests the court to make the following Findings of Fact and Conclusions of Law in this action.

Dated this 31st day of January, 1933.

ELLIOTT and SNELL,
Attorneys for Plaintiff. [66]

[Title of Court and Cause No. L-844-Phx.]

This cause coming on for trial at the regular term of said court and on the 11th day of October, 1932, and having been tried before the court, a jury having been legally waived by the respective parties hereto, plaintiff appearing by its attorneys Elliott and Snell, and the defendants appearing by their attorneys Baker and Whitney, Chalmers, Fennemore and Nairn, James E. Lyons and Burton Mason; and the parties hereto having agreed and stipulated that this cause would be consolidated for purposes of trial with another cause pending in this court, and being numbered and docketed as follows, to-wit, No. L-738-Phoenix; and said parties having further stipulated and agreed that the evidence introduced in said causes so consolidated for purposes of trial would apply to each of said two respective cases so consolidated; and the respective parties having offered both oral and documentary evidence in support of their respective pleadings herein, and the trial of said matter having been concluded on the 13th day of October, 1932; and pursuant to stipulation the parties subsequently on the 17th day of January, 1933, offered certain oral testimony with respect to the matter of the fees to be allowed to plaintiff's attorneys and counsel; and the court being duly requested to make, enter and file special Findings of Fact and Conclusions of Law in said cause prior to rendering judgment; and the court, after hearing the evidence, the argument of counsel, and being fully advised in the premises, does hereby make and file the following

as its Findings of Fact and Conclusions of Law, constituting the decision of the court in this action:

FINDINGS OF FACT.

That plaintiff is, and was at all times herein mentioned, a corporation organized under the laws of the State of Arizona, and qualified to do business [67] in said State of Arizona.

II.

That defendants, Southern Pacific Company, and Santa Maria Valley Railroad Company, now are, and at all times herein mentioned have been, corporations duly organized and existing as such, and engaged in the operations of lines of railroad, pursuant to the authority of law, as common carriers for hire, and in the transportation of property by means of their lines of railroad and in conjunction with their connecting carriers, in interstate commerce from points in the State of California to points in the State of Arizona.

III.

That heretofore, and at various dates between the 14th day of September, 1923, and the 1st day of May, 1928, there were shipped to Tucson from Betteravia, Oxnard, Crockett, and San Francisco, California, over the lines of said defendants, 23 carload shipments of sugar; that said shipments are severally and correctly set forth upon the list shown as "Exhibit A" attached to plaintiff's complaint filed herein, to which reference is hereby made the same as if said exhibit and the contents thereof

were a part of these Findings of Fact; and which list correctly shows in detail the dates upon which the charges for transportation thereof were collected, the car initials and numbers of the cars in which the same were loaded and transported, the several points of origin thereof, the several weights of said shipments, the rates thereon assessed, and the charges thereon collected, the rates subsequently found by the Interstate Commerce Commission to have been reasonable, and the amounts which would have accrued under said last-mentioned rates (said last-mentioned rates and amounts being shown under the columns headed "Should be"), and the amount of reparations claimed by the plaintiff and allowed by said Commission with respect to each of said shipments.

IV.

That the plaintiff, prior to the commencement of this action, filed his petition and complaint with and before the Interstate Commerce Commission of [68] the United States, alleging that the rates and charges on the abovementioned shipments were unjust and unreasonable as to the plaintiff, and that thereafter the defendants filed their answer with and before the Interstate Commerce Commission under docket No. 16770 (subdivision No. 2).

V.

That the Interstate Commerce Commission on March 12, 1928, made and rendered its opinion and order reported in volume 140 of Interstate Commerce Commission Reports, at page 171 and follow-

ing, and finding that the rates on sugar in carloads from Betteravia and Oxnard, California, had in the past been unreasonable to the extent that they exceeded a rate and charge of 73¢ per 100 pounds on and after July 1, 1922, and from Crockett and San Francisco, California, had in the past been unreasonable to the extent that they exceeded a rate and charge of 77¢ per 100 pounds on and after July 1, 1922, and that certain of the plaintiffs in said proceedings, (including plaintiff herein) had made shipments at the rates found in said proceedings to have been unreasonable; that they had paid and borne the charges thereon, and were damaged thereby in the amount of the difference between the charges paid and those which would have accrued at the rates found in said proceedings to have been reasonable; and that said complainants (including plaintiff herein) were entitled to reparation, with interest. Said list of shipments set forth in plaintiff's "Exhibit A" attached to its complaint hereinabove referred to shows in detail, as previously stated, the charges actually assessed upon plaintiff's shipments involved in this cause, and the charges which would have accrued thereon upon the basis of the rates declared by said Commission in said above-mentioned report and order to have been the reasonable rates to have been applied at said dates of movement, together with the difference between the charges so assessed and those which would have accrued, which said last mentioned differences constitute the amounts herein claimed by the plaintiff, exclusive of interest and fees of its attorneys and counsel.

VI.

That said freight charges assessed the plaintiff on the list of shipments [69] set forth in said "Exhibit A" hereinabove referred to, same being the shipments involved in this cause, were and are unreasonable to the plaintiff and in violation of the Interstate Commerce Commission Act of February 4, 1887, and the acts of Congress amendatory thereto.

VII.

That the just and reasonable rates which should have been charged on all of said shipments listed in said "Exhibit A" above referred to from Betteravia and Oxnard, California, to said point of destination in Arizona after the 1st day of July, 1922, was 73¢ per 100 pounds, and from Crockett and San Francisco, California, to said point of destination in Arizona after the 1st day of July, 1922, was 77¢ per 100 pounds.

VIII.

That the plaintiff did duly comply with all of the requirements of the Interstate Commerce Commission as to the proof necessary for the amount of said reparations.

IX.

That heretofore and on the 13th day of April, 1931, the Interstate Commerce Commission duly made and rendered its Supplemental Order in Docket No. 16742 and causes consolidated therewith, including said Docket No. 16770 (subdivision No. 2), ordering and directing the defendants to pay unto the plaintiff the following sums, to-wit:

Santa Maria Valley Railroad Company	$ 81.60
Southern Pacific Company	$1090.09
	$1171.69

together with interest thereon at the rate of six percent (6%) per annum from the respective dates of the payment of the charges as shown on said list of shipments above referred to and specifically set forth on "Exhibit A" attached to plaintiff's complaint filed in this cause.

Said last mentioned Order required the payment of said sums on or before the 28th day of May, 1931; and that the same were as reparation on account of the unreasonable rates charged for the transportation of certain carload [70] shipments of sugar from points in California to points in Arizona (including Tucson, Arizona).

Defendants have failed and refused to comply with said Order, or to pay said sums or any part thereof to the plaintiff although demand and request therefor have heretofore been duly made by the plaintiff upon said defendants.

X.

That by reason of said unreasonable rates, charges, and payment thereof by the plaintiff, and by reason of the refusal of the defendants to pay said reparations so awarded by the Interstate Commerce Commission, plaintiff is damaged by the defendant Santa Maria Valley Railroad Company in the total sum of $81.60, and by the defendant Southern Pacific Company in the total sum of $1090.09,

together with interest on said amounts at the rate of six percent (6%) per annum from the respective dates of payment.

XI.

That the plaintiff was required to employ attorneys at law to prosecute the present action, in order to effect collection of said reparations, and that twenty percent (20%) of the total amount due, including interest and principal, in this cause is reasonable as attorneys fees.

CONCLUSIONS OF LAW.

Based upon the foregoing Findings of Fact, the Court finds as Conclusions of Law as follows:

I.

That the order of the Interstate Commerce Commission dated the 13th day of April, 1931, and made and entered in that certain proceeding before said Commission entitled "Traffic Bureau of Phoenix Chamber of Commerce, et al, v. Atchison, Topeka & Santa Fe Railway Company, et al", docketed No. 16742, and causes consolidated therewith (including Docket No. 16770), which said order required said defendants to pay to the plaintiff herein certain sums of money as set forth in said Order, and in plaintiff's complaint, was and is a legal, valid and binding order, and was made and entered by said Interstate Commerce [71] Commission in said cause, and was within the power and jurisdiction conferred upon said Interstate Commerce Commission by law, and that in the making of said

Order the said Interstate Commerce Commission acted within its jurisdiction and power.

II.

That the following rates charged the plaintiff by the defendants, to-wit:

For a shipment made on September 14, 1923 from Betteravia, California, 86½¢ per 100 pounds;

For a shipment made on October 13, 1923, as shown on "Exhibit A" attached hereto and made a part hereof, 86½¢ per 100 pounds;

For a shipment made on April 28, 1928, as shown on "Exhibit A" attached hereto and made a part hereof, 75¢ per 100 pounds;

For shipments made between February 27, 1923, and December 28, 1923, inclusive, from Crockett and San Francisco, California, 86½¢ per 100 pounds;

For shipments made between January 24, 1924, and July 13, 1925, inclusive, from Crockett and San Francisco, California, 84¢ per 100 pounds;

on carload shipments of sugar, all as shown on "Exhibit A" attached to plaintiff's complaint, were, as found by the Interstate Commerce Commission in said proceedings known as Docket No. 16742, unreasonable to the extent that they exceeded 73¢ per 100 pounds from Betteravia and Oxnard, California, and 77¢ per 100 pounds from Crockett and San Francisco, California, to Tucson, Arizona, during the periods hereinabove set forth; and that the reasonable rates which should have been charged the plaintiff on account of said shipments over defendants' lines during said periods were 73¢ cents per

100 pounds from Betteravia and Oxnard, California, and 77¢ per 100 pounds from Crockett and San Francisco, Calif., to Tucson, Arizona. [72]

That by reason of said unreasonable charges the plaintiff has been damaged, and the defendant Santa Maria Valley Railroad Company is indebted to the plaintiff in the sum of $81.60 principal, together with interest at the rate of six percent (6%) per annum from the respective dates of payment of the charges as shown on the list of shipments set forth in "Exhibit A" attached to plaintiff's complaint, said interest amounting to the sum of $..... as of this date, and attorneys fees of twenty percent (20%) of the total amount of said indebtedness, including principal and interest, said attorneys fees amounting to the sum of $.....; and the defendant Southern Pacific Company is indebted to the plaintiff in the sum of $1090.09, together with interest at the rate of six percent (6%) per annum from the respective dates of payment of the charges as shown on the list of shipments set forth in "Exhibit A" attached to plaintiff's complaint, said interest amounting to the sum of $..... as of this date, and attorneys fees of twenty percent (20%) of the total amount of said indebtedness, including principal and interest, said attorneys fees amounting to the sum of $.....; and that the plaintiff is entitled to judgment therefor.

Dated this.....day of..... 1933.

.....

Judge of the District Court.

Received copy of within this 1st day of February 1933.

BAKER & WHITNEY
LAWRENCE L. HOWE
Attys. for Sou. Pac. Co.

[Endorsed]: Filed Feb. 1, 1933. [73]

MINUTE ENTRY OF THURSDAY, FEBRUARY 2, 1933.

[Title of Court and Cause—Consolidated Cases]

Upon motion of Alexander B. Baker, Esquire, of counsel for the Defendants,

IT IS ORDERED that the defendants be allowed twenty (20) days from and after this date, within which to file Proposed Amendments and Additions to Plaintiffs' Findings of Fact and Conclusions of Law. [74]

[Title of Court and Cause—Consolidated Cases]

DEFENDANTS' PROPOSED AMENDMENTS AND ADDITIONS TO FINDINGS OF FACT AND CONCLUSIONS OF LAW REQUESTED BY PLAINTIFFS.

The defendants in the above-named causes hereby propose amendments and additions to the findings of fact and conclusions of law requested by the plaintiffs in said causes, as follows:

1. The defendants propose that plaintiffs' said requested findings of fact and conclusions of law in said causes be amended by eliminating the several preambles thereto, for the reason that the same are not, nor is either of them, in accordance with the record and the law, nor sufficiently clear, definite and concise; and defendants request that the preamble to the special findings of fact and conclusions of law requested by the defendants, annexed hereto, be substituted therefor.

2. Defendants propose that plaintiffs' said findings be amended by eliminating the paragraphs numbered I of plaintiffs' said requested findings of fact in each of said causes, for the reason [75] that the findings therein set forth should be consolidated into one paragraph, said causes having been duly consolidated for purposes of trial and decision, pursuant to stipulation of the parties and order of court; and defendants therefore request that paragraph 1 of the special findings of fact requested by defendants, annexed hereto, be substituted therefor.

3. Defendants propose that plaintiffs' said findings be amended by eliminating paragraph II of plaintiffs' requested findings of fact in Cause No. L-738, for the reason that said paragraph is superfluous, in that the above-entitled causes have been duly consolidated for purposes of trial and decision, and said paragraph should therefore be merged into a single paragraph relating to all of the defendants in both of the causes; and defendants therefore request that paragraph 2 of the special

findings of fact requested by defendants, annexed hereto, be substituted therefor.

4. Defendants propose that plaintiffs' said findings be amended by eliminating the paragraphs numbered III of plaintiffs' requested findings of fact in each of said causes, for the reason that the same are not sustained by the evidence, and are contrary to the evidence and the record, and for the further reason that the same are not sufficiently clear, definite and concise; and defendants request that paragraph 3 of the special findings of fact requested by defendants, annexed hereto, be substituted therefor.

5. Defendants propose that plaintiffs' said findings be amended by eliminating paragraph IV of the special findings of fact requested by plaintiffs in Cause No. L-738, for the reason that the same is not sustained by the evidence and the law, and is contrary to the evidence and the law, and upon the further ground that the same is not sufficiently clear and definite.

6. Defendants propose that plaintiffs' said findings be amended by eliminating paragraph V of plaintiffs' requested findings of fact in Cause No. L-738, and paragraph IV of plaintiff's requested [76] findings of fact in Cause No. L-844, for the reason that the same are not sustained by the evidence, and are contrary to the evidence and the record herein, and for the further reason that the same are not sufficiently clear, definite and concise; and defendants request that paragraph 4 of the spe-

cial findings of fact requested by defendants, annexed hereto, be substituted therefor.

7. Defendants propose that plaintiffs' said findings be amended by eliminating paragraph VI of plaintiffs' requested findings of fact in Cause No. L-738, and paragraph V of plaintiff's requested findings of fact in Cause No. L-844, for the reason that the same are not sustained by the evidence, and are contrary to the evidence and the law, and for the further reason that the same are not sufficiently clear and definite; and defendants request that paragraph 5 of the special findings of fact requested by defendants, annexed hereto, be substituted therefor.

8. Defendants propose that plaintiffs' said findings be amended by eliminating paragraph VII of plaintiffs' requested findings of fact in Cause No. L-738, and paragraph VIII of plaintiff's requested findings of fact in Cause No. L-844, for the reason that the same are not sufficiently clear and definite, and are not sustained or supported by the evidence, and are contrary to the evidence and the law; and defendants request that paragraph 6 of the special findings of fact requested by defendants, annexed hereto, be substituted therefor.

9. Defendants propose that plaintiffs' said findings be amended by eliminating paragraphs VIII and IX (on sheets 4 and 5) of plaintiffs' requested findings of fact in Cause No. L-738, and paragraph IX of plaintiff's requested findings of fact in Cause No. L-844, for the reason that the same are not sustained or supported by the evidence, and are con-

trary to the evidence and the law, and for the further reason that the same are not sufficiently clear, definite and concise; and defendants request that para- [77] graphs 7 and 8 of the special findings of fact requested by defendants, annexed hereto, be substituted therefor.

10. Defendants propose that plaintiffs' said findings be amended by eliminating paragraphs X and XI of plaintiffs' requested findings of fact in Cause No. L-738, and paragraphs VI and VII of plaintiff's requested findings of fact in Cause No. L-844, for the reason that the same are not sustained or supported by the record or the evidence, and are contrary to the evidence and the law; and defendants request that paragraph 16 of the special findings of fact requested by defendants, annexed hereto, be substituted therefor.

11. Defendants propose that plaintiffs' said findings be amended by eliminating paragraph XII of plaintiffs' requested findings of fact in Cause No. L-738, and paragraph X of plaintiff's requested findings of fact in Cause No. L-844, for the reason that the same are not sustained or supported by the record or the evidence, and are contrary to the evidence and the law.

12. Defendants propose that plaintiffs' said findings be amended by eliminating the paragraph numbered VIII on sheet 6 of plaintiffs' requested findings of fact in Cause No. L-738, and paragraph XI of plaintiff's requested findings of fact in Cause No. L-844, for the reason that the same are not sustained

by the evidence, and are contrary to the evidence and the law, and upon the further ground that the same are not sufficiently clear, definite and concise.

13. Defendants propose, as further additions and amendments to the findings of fact requested by plaintiffs, that the Court make findings of fact as set forth in paragraphs 9, 10, 11, 12, 13, 14 and 15 of the findings of fact requested by defendants, hereto annexed.

14. Defendants propose that plaintiffs' conclusions of law be amended by eliminating the paragraphs numbered I of the conclu- [78] sions of law requested by plaintiffs in each of said causes, for the reason that the same are not sustained by the evidence or the law, and are contrary to the evidence and the law; and defendants request that paragraph 2 of the conclusions of law requested by defendants, annexed hereto, be substituted therefor.

15. Defendants propose that plaintiffs' conclusions of law be amended by eliminating the paragraphs numbered II of the conclusions of law requested by plaintiffs in each of said causes, for the reason that the same are not sufficiently clear and definite, and are not sustained by the evidence or the law, and are contrary to the evidence and the law; and defendants request that paragraph 1 of the conclusions of law requested by defendants, annexed hereto, be substituted therefor.

16. Defendants propose that plaintiffs' conclusions of law be amended by eliminating the paragraphs numbered III of the conclusions of law re-

quested by plaintiffs in each of said causes, for the reason that the same are not sustained by the evidence or the law, and are contrary to the evidence and the law, and for the further reason that the same are not sufficiently clear, definite and concise; and defendants request that paragraphs 3 and 4 of the conclusions of law requested by defendants, annexed hereto, be substituted therefor.

WHEREFORE, defendants pray that the findings of fact and conclusions of law requested by plaintiffs be amended as hereinbefore specified, and that the Court make additional findings of fact and conclusions of law as set forth in the document styled "Special Findings of Fact and Conclusions of Law Requested by Defendants", which is annexed hereto, and herewith filed and presented to the Court; and that in accordance therewith the Court do render and enter judgments in the above causes, in favor of [79] the defendants, and against the plaintiffs.

Dated: February 21, 1933.

CHALMERS, FENNEMORE & NAIRN,
BAKER & WHITNEY,
GERALD E. DUFFY,
JAMES E. LYONS,
BURTON MASON,
Attorneys for Defendants.

Received copy of within this 21st day of Feb. 1933.

SAMUEL WHITE,
Atty. for Pltf.

[Endorsed]: Filed Feb 21 1933. [80]

[Title of Court and Cause—Consolidated Cases.]

MINUTE ENTRY OF SATURDAY, APRIL 15, 1933.

Messrs. Elliott & Snell, by Frank L. Snell, Jr., Esquire, and Samuel White, Esquire, appear as counsel for plaintiffs. Messrs. Baker & Whitney, by Alexander B. Baker, Esquire, appear as counsel for the defendants.

Upon motion of counsel for plaintiffs.

IT IS ORDERED that Findings of Fact and Conclusions of Law, be set for hearing and settlement, Friday, May 12, 1933, at the hour of ten o'clock A. M. [94]

[Title of Court and Cause—Consolidated Cases.]

MINUTE ENTRY OF FRIDAY, MAY 12, 1933.

Findings of Fact and Conclusions of Law requested by plaintiffs; Defendants' Proposed Amendments and Additions thereto and Special Findings of Fact and Conclusions of Law Requested by Defendants come on regularly for hearing this day.

Messrs. Elliott & Snell, by Frank L. Snell, Jr., Esquire, and Messrs. White & Wilson, by Samuel White, Esquire, appear for Plaintiffs. Messrs. Chalmers, Fennemore & Nairn, by T. G. Nairn, Esquire, Gerald Duffy, Esquire, and Burton Mason, Esquire, appear for the Defendants.

Argument is had by respective counsel, and

IT IS ORDERED that Findings of Fact and Conclusions of Law shall be consolidated when it

quested by plaintiffs in each of said causes, for the reason that the same are not sustained by the evidence or the law, and are contrary to the evidence and the law, and for the further reason that the same are not sufficiently clear, definite and concise; and defendants request that paragraphs 3 and 4 of the conclusions of law requested by defendants, annexed hereto, be substituted therefor.

WHEREFORE, defendants pray that the findings of fact and conclusions of law requested by plaintiffs be amended as hereinbefore specified, and that the Court make additional findings of fact and conclusions of law as set forth in the document styled "Special Findings of Fact and Conclusions of Law Requested by Defendants", which is annexed hereto, and herewith filed and presented to the Court; and that in accordance therewith the Court do render and enter judgments in the above causes, in favor of [79] the defendants, and against the plaintiffs.

Dated: February 21, 1933.

CHALMERS, FENNEMORE & NAIRN,
BAKER & WHITNEY,
GERALD E. DUFFY,
JAMES E. LYONS,
BURTON MASON,
Attorneys for Defendants.

Received copy of within this 21st day of Feb. 1933.

SAMUEL WHITE,
Atty. for Pltf.

[Endorsed]: Filed Feb 21 1933. [80]

[Title of Court and Cause—Consolidated Cases.]

MINUTE ENTRY OF SATURDAY, APRIL 15, 1933.

Messrs. Elliott & Snell, by Frank L. Snell, Jr., Esquire, and Samuel White, Esquire, appear as counsel for plaintiffs. Messrs. Baker & Whitney, by Alexander B. Baker, Esquire, appear as counsel for the defendants.

Upon motion of counsel for plaintiffs.

IT IS ORDERED that Findings of Fact and Conclusions of Law, be set for hearing and settlement, Friday, May 12, 1933, at the hour of ten o'clock A. M. [94]

[Title of Court and Cause—Consolidated Cases.]

MINUTE ENTRY OF FRIDAY, MAY 12, 1933.

Findings of Fact and Conclusions of Law requested by plaintiffs; Defendants' Proposed Amendments and Additions thereto and Special Findings of Fact and Conclusions of Law Requested by Defendants come on regularly for hearing this day.

Messrs. Elliott & Snell, by Frank L. Snell, Jr., Esquire, and Messrs. White & Wilson, by Samuel White, Esquire, appear for Plaintiffs. Messrs. Chalmers, Fennemore & Nairn, by T. G. Nairn, Esquire, Gerald Duffy, Esquire, and Burton Mason, Esquire, appear for the Defendants.

Argument is had by respective counsel, and

IT IS ORDERED that Findings of Fact and Conclusions of Law shall be consolidated when it

appears that the destination of the shipment is the same and filed in the record of each case.

IT IS FURTHER ORDERED that the preamble proposed in the Special Findings of Fact and Conclusions of Law [95] Requested by Defendants be allowed and adopted and that Plaintiffs' Exception thereto be allowed; that Plaintiffs' Proposed Findings of Fact 5 and 6 in L-844-Phoenix and L-738-Phoenix, 7 in L-738-Phoenix, 8 in L-844-Phoenix, 6 and 7 in L-844-Phoenix, 10 and 11 in L-738-Phoenix, 9 in L-844-Phoenix, 8 and 9 in L-738-Phoenix, 12 and 13 in L-738-Phoenix, 10 and 11 in L-844-Phoenix be adopted, to each of which rulings and order of the Court the Defendants except, and that Plaintiffs' Proposed Findings of Fact 4 be rejected, to which ruling and order of the Court the Plaintiffs except;

That Defendants' Special Findings of Fact 1, 2, 3 and 4 be adopted, to each of which rulings and order of the Court the Plaintiffs except, and that said Special Findings of Fact 5, 16, 7, 8, 9, 10, 11, 12, 13, 14 and 15 be rejected, to each of which rulings and order of the Court the Defendants except, and that Defendants' Objection 11 be overruled, and that Defendants' exception be allowed;

That Plaintiffs' Conclusions of Law be adopted in lieu of the Conclusions of Law proposed by the Defendants, to which ruling and order of the Court the Defendants except.

IT IS FURTHER ORDERED that the Findings of Fact and Conclusions of Law as adopted be en-

grossed; that Judgments for the Plaintiffs in accordance with said engrossed Findings of Fact and Conclusions of Law be entered, and that an exception for Defendants be allowed to said order for Judgment. [96]

[Title of Court and Cause—Consolidated Cases.]

STIPULATION

to include certain exhibits in Findings of Fact and Conclusions of Law by reference.

It is stipulated and agreed that the Court in making its Findings of Fact and Conclusions of Law in the above entitled causes, may incorporate by reference "Exhibit B" attached to plaintiff's Complaint in cause No. L-738-Phoenix, and "Exhibit A" attached to plaintiff's Complaint in Cause No. L-844-Phoenix (both of which exhibits are also referred to as Rule V statements), with the same force and effect as if said exhibits and statements were physically incorporated in said Findings of Fact and Conclusions of Law.

Dated this 5th day of June, 1933.

ELLIOTT & SNELL,
SAMUEL W. WHITE,
FRANK L. SNELL, JR.,
Attorneys for Plaintiffs.
BAKER & WHITNEY,
Attorneys for Defendants. [97]

[Endorsed]: Filed Jun 8 1933. [98]

[Title of Court and Cause—Consolidated Cases.]

MINUTE ENTRY OF THURSDAY, JUNE 8, 1933.

Findings of Fact and Conclusions of Law, having been presented to the Court in due time, together with the Proposed Amendments thereto, and settled by the Court on the 12th day of May, 1933, the Court now

ORDERS that the said Findings of Fact and Conclusions of Law be filed this 8th day of June, 1933, notwithstanding Rule 31 of this Court.

Thereupon, said Findings of Fact and Conclusions of Law are filed, and entered as follows, to-wit: [99]

[Title of Court and Cause—L-738-Phx.]

MEMORANDUM OF COSTS AND DISBURSEMENTS

DISBURSEMENTS

Marshal's Fees	$ 2.00
Clerk's Fees	10.00
Attorney fees allowed by the Court as provided by law	222.82
Examiner's Fees	
Witness Fees	
Certified copies from I.C.C. of Rule "V" Statements, report and findings, and order of reparation	3.90
Total	$ 238.72

United States of America
District of Arizona—ss.

Samuel White being duly sworn, deposes and says: That he is the Attorney for the plaintiff in the above-entitled cause, and as such has knowledge of the facts relative to the above costs and disbursements. That the items in the above memorandum contained are correct; that the said disbursements have been necessarily incurred in the said cause, and that the services charged therein have been actually and necessarily performed as therein stated.

SAMUEL WHITE

Subscribed and sworn to, before me, this 20 day of May, A. D. 1933.

[Seal] RUE VERA MORRIS
Notary Public.

My commission expires Feb. 28, 1937. [110]

To Baker & Whitney, Chalmers, Fennemore & Nairn, James E. Lyons, and Burton Mason, attorneys for defendants.

You will please take notice that on Tuesday the 13th day of June, A. D. 1933, at the hour of ten o'clock A. M. Plaintiff will apply to the Clerk of said Court to have the within memorandum of costs and disbursements taxed pursuant to the rule of said Court, in such case made and provided.

SAMUEL WHITE
Attorney for Plaintiff.

Service of within memorandum of costs and disbursements and receipt of a copy thereof acknowl-

edged, this 10 day of June, A. D. 1933.

BAKER & WHITNEY
Attorney for Defendants.

Plaintiff's Costs $238.72 taxed and entered this 19th day of June, 1933.

J. LEE BAKER, Clerk.
By George A. Hillier,
Deputy Clerk.

[Endorsed]: Filed Jun 10 1933. [111]

[Title of Court and Cause—L-738-Phx.]

DEFENDANTS' EXCEPTIONS TO STATEMENT OF COSTS.

NOW COMES the defendant and excepts to Plaintiffs' Statement of Costs and the following items thereof, to-wit:

1. To the item of $222.82, attorneys' fees, on the ground it is not recoverable as costs in that the amount is excessive to such an extent as to amount to an abuse by the Court of its discretion, and upon the further ground that attorneys' fees are allowable only if the plaintiff shall finally prevail, and this case has not been finally concluded, as defendants have notified Court and Counsel of their intention to appeal from the Judgment.

2. To the item of $3.90 for certified copies from the I. C. C. of Rule "V" Statements, etc., upon [112] the ground that the same is not recoverable

as costs and is merely an expense incidental to the preparation of the case for trial.

Dated: June 16, 1933.

BAKER & WHITNEY
CHALMERS, FENNEMORE & NAIRN
J. E. LYONS
GERALD E. DUFFY
BURTON MASON
Attorneys or Defendant.

Received copy of within Exceptions this 17th day of June, 1933.

SAMUEL WHITE
Attorney for Plaintiff.

Overruled. June 19, 1933, 9:30 A. M.

J. LEE BAKER, Clerk
By George A. Hillier,
Deputy Clerk.

[Endorsed]: Filed Jun 17, 1933. [113]

[Title of Court and Cause No. L-844-Phx.]

NOTICE OF APPLICATION TO TAX COSTS.

To the Clerk of said Court, and Baker and Whitney, Chalmers, Fennemore and Nairn, James E. Lyons, Burton Mason, and Gerald E. Duffy, Attorneys for Defendants:

Please take notice that the attorneys for the plaintiff will on the 13th day of June, 1933, at 10:00 o'clock A. M. make application to the Clerk of the court, at his office, to tax the costs incurred in said

action, as provided by law; and that a memorandum of the costs and necessary disbursements in said action is attached hereto and made a part of this notice.

Dated this 10th day of June, 1933.

ELLIOTT & SNELL,
Attorneys for Plaintiff.

STATEMENT OF COSTS.

To the Clerk of said Court, and Baker and Whitney, Chalmers, Fennemore and Nairn, James E. Lyons, Burton Mason, and Gerald E. Duffy, Attorneys for Defendants:

You and each of you are hereby notified that the plaintiff, Wheeler-Perry Company, claims as costs in the above entitled cause the sum of $397.66 for the following expenses incurred by it, viz.: [114]

Clerk's fees	$ 10.00
U. S. Marshal fees	2.00
Attorneys fees owed by Southern Pacific Company and Santa Maria Railroad Company as allowed by court	25.68
Attorneys fees owed by Southern Pacific Company as allowed by court	359.98
	$397.66

State of Arizona
County of Maricopa.—ss.

FRANK L. SNELL, Jr., being first duly sworn, on oath deposes and says:

That he is one of the attorneys for the above named plaintiff, and as said attorney is better informed as to its costs expended in the above entitled cause than the said plaintiff; that the above items are correct, and that the disbursements above set forth have been necessarily incurred in the above action, and that said amouns hereinabove listed have been expended or incurred for the plaintiff in said cause.

FRANK L. SNELL, JR.

Subscribed and sworn to before me this 6 day of June, 1933.

My commission as Notary expires June 17, 1935.

(Seal) MARY KAVANAUGH

Notary Public in and for Maricopa County, State of Arizona.

Received the within this 10 day of June, 1933.

BAKER & WHITNEY

Attorneys for Defendants.

Plaintiff's Costs $397.66 taxed and entered this 19th day of June, 1933.

J. LEE BAKER, Clerk

By George A. Hillier,

Deputy Clerk.

[Endorsed]: Filed Jun 10 1933. [115]

[Title of Court and Cause No. L-844-Phx.]

DEFENDANTS' EXCEPTIONS TO STATEMENT OF COSTS.

NOW COME the defendants and except to Plaintiff's Statement of Costs and the following items thereof, to-wit:

1. To the item of $25.68, attorneys' fees, owed by Southern Pacific Company and Santa Maria Railroad Company, on the ground it is not recoverable as costs in that the amount is excessive to such an extent as to amount to an abuse by the Court of its discretion, and upon the further ground that attorneys' fees are allowable only if the plaintiff shall finally prevail and this case has not been finally concluded, as defendants have notified Court and Counsel of their intention to appeal from the Judgment.

2. To the item of $359.98, attorneys' fees, owed by Southern Pacific Company, on the ground it is not recoverable as costs in that the amount is excessive [116] to such an extent as to amount to an abuse by the Court of its discretion, and upon the further ground that attorneys' fees are allowable only if the plaintiff shall finally prevail and this case has not been finally concluded, as defendants have notified Court and Counsel of their intention to appeal from the Judgment.

DATED: June 16, 1933.

BAKER & WHITNEY
CHALMERS, FENNEMORE & NAIRN
GERALD E. DUFFY
J. E. LYONS
BURTON MASON
Attorneys for Defendants.

Copy of the within Exceptions received this 17th day of June, 1933.

ELLIOTT & SNELL
Attorney for Plaintiff.

Overruled June 19, 1933, 9:30 A. M.
J. LEE BAKER, Clerk
By George A. Hillier,
Deputy Clerk.

[Endorsed]: Filed June 17 1933. [117]

[Title of Court and Cause—Consolidated Cases.]

STIPULATION FOR CONSOLIDATION OF RECORD.

IT IS HEREBY STIPULATED that the records in the above two cases shall be consolidated for the purposes of appeal to the United States Circuit Court of Appeals for the Ninth Circuit, and for the purpose of review by said United States Circuit Court of Appeals, or any other appellate court, and for such purpose it is sufficient that one set of Defendants' proposed amendments and additions to Findings of Fact and Conclusions of Law requested by plaintiffs, and one set of the Special Findings of Fact and Conclusions of Law requested by defendants, and one set of the Court's Findings of Fact and Conclusions of Law and one Bill of Exceptions, and one set of Assignments of Error be filed, [118] which may be marked and filed in cause No. L-738-Phoenix above named, and which shall be deemed to apply to all of the said cases

and that hereafter only one of all orders, documents, notices and papers shall be required to be filed, and may be filed in said cause No. L-738-Phoenix and shall be deemed to apply to all of said cases.

DATED at Phoenix, Arizona, this 19th day of June, 1933.

SAMUEL WHITE
ELLIOTT & SNELL
Attorneys for Plaintiffs.
BAKER & WHITNEY
JAMES E. LYONS
BURTON MASON
CHALMERS, FENNEMORE & NAIRN
GERALD E. DUFFY
Attorneys for Defendants.

[Endorsed]: Filed Jun 20 1933. [119]

[Title of Court and Cause—Consolidated Cases.]

ORDER FOR CONSOLIDATION OF RECORD

In accordance with stipulation of counsel it is hereby ordered that the records in the above two cases shall be consolidated for the purposes of appeal to the United States Circuit Court of Appeals for the Ninth Circuit, and for the purpose of review by said United States Circuit Court of Appeals, or any other appellate court, and for such purpose it is sufficient that one set of Defendants'

proposed amendments and additions to Findings of Fact and Conclusions of Law requested by plaintiffs, and one set of the Special Findings of Fact and Conclusions of Law requested by defendants, and one set of the Court's Findings of Fact and Conclusions of Law, and [120] one Bill of Exceptions, and one set of Assignments of Error be filed, which may be marked and filed in cause No. L-738-Phoenix above named, and which shall be deemed to apply to all of the said cases and that hereafter only one of all orders, documents, notices and papers shall be required to be filed, and may be filed in said cause No. L-738-Phoenix and shall be deemed to apply to all of said cases.

Dated at Phoenix, Arizona, this 19th day of June, 1933.

F. C. JACOBS
District Judge.

[Endorsed]: Filed Jun 20 1933. [121]

[Title of Court and Cause—No. L-525.]

In the United States District Court
For the District of Arizona

MINUTE ENTRY OF WEDNESDAY,
APRIL 16, 1930
(Tucson General Minutes)

Plaintiff's Motion to Strike Portions of Defendant's Answer comes on regularly for hearing this

date. No counsel appears for any party. Whereupon,

IT IS ORDERED that this case be and it is hereby transferred to the Phoenix Division of this Court for further proceedings, pursuant to stipulation of counsel on file and approval of Honorable F. C. Jacobs, United States District Judge at Phoenix. [122]

[Title of Court and Cause—No. L-738.]

MINUTE ENTRY OF MONDAY, SEPTEMBER 12, 1932

Messrs. White & Wilson, by George T. Wilson, Esquire, appear as counsel for plaintiffs. Messrs. Baker & Whitney, by Alexander B. Baker, Esquire, appear as counsel for the defendant.

Plaintiff's Motion to Set for Trial is now regularly called, and

IT IS ORDERED that this case be, and the same is hereby set for trial at Phoenix, Tuesday, October 11, 1932, at the hour of ten o'clock, A. M. [129]

[Title of Court—Consolidated Cases.]

MINUTE ENTRY OF TUESDAY, OCTOBER 11, 1932

These cases come on regularly for trial this day, before the Court sitting without a Jury, a Jury

having been expressly waived upon the written stipulation of counsel heretofore filed herein. Counsel now stipulate to consolidate these cases for trial. Samuel White, Esquire, and V. R. Seed, Esquire, counsel for plaintiffs, F. J. Baffert and A. S. Leon, appear by Samuel White, Esquire.

Messrs. Elliott & Snell, by Frank L. Snell, Jr., Esquire, appear for plaintiff, Wheeler-Perry Company, a corporation.

Messrs. Baker & Whitney, Messrs. Chalmers, Fennemore & Nairn, and James E. Lyon, Esquire, counsel for Defendants, appear by Burton Mason, Esquire, Gerald Duffy, Esquire, and Thomas G. Nairn, Esquire.

Upon motion of Frank L. Snell, Jr., Esquire, and with the consent of counsel for Defendants,

IT IS ORDERED that plaintiff be granted leave to sign complaint in Law-844-Phoenix, Wheeler-Perry Company, a corpor- [130] ation, vs. Southern Pacific Company, a corporation, and Santa Maria Valley Railroad Company, a corporation.

L. O. Tucker, is now sworn to report the evidence in this case.

Upon motion of Samuel White, Esquire,

IT IS ORDERED that Frank L. Snell, Jr., Esquire, be entered as associate counsel in Law-738-Phoenix, F. J. Baffert and A. S. Leon, co-partners trading under the firm name of Baffert & Leon, vs. Southern Pacific Company, a corporation.

PLAINTIFF'S CASE:

The following plaintiffs' Exhibits are now admitted in evidence:

1. Bulletin, Interstate Commerce Commission, No. 16742.

2. Order, Interstate Commerce Commission, No. 16770.

3. Order, Interstate Commerce Commission, No. 17549, in case No. Law-738-Phoenix.

4. Rule, Interstate Commerce Commission, No. 16770, in case No. Law-844-Phoenix.

Upon stipulation of respective counsel,

IT IS ORDERED that Exhibit "B", attached to the Complaint in Law-738-Phoenix, stand as an Exhibit to the Complaint, in Law-844-Phoenix.

Whereupon, the plaintiffs rest.

Burton Mason, Esquire, of counsel for Defendants, now moves for a non-suit.

Argument is now had by respective counsel, and

IT IS ORDERED that said Motion be, and the same is hereby denied, to which ruling and order of the Court, the defendants except.

Said counsel for Defendants now move that Findings of Fact and Conclusions of Law be filed by the Court, at the conclusion of the trial hereof, and

IT IS ORDERED that said Motion be, and the same is [131] hereby granted.

DEFENDANTS' CASE:

J. L. Fielding, is now sworn and examined on behalf of the defendants.

The following Defendants' Exhibits are now admitted in evidence:

"A" Decision and Order, Docket No. 6806, Interstate Commerce Commission.

"B" Opinion and Order, Docket No. 11532, Interstate Commerce Commission.

"C" Opinion and Order, Docket No. 11442, Interstate Commerce Commission.

"D" Opinion and Order, Docket No. 13139, Interstate Commerce Commission.

"E" Statement of Carload Rates.

"F" Statement of Rates assessed carload shipments.

"G" Rate Authority No. 8016, Director General of Railroads.

"H" Letter from Director General of Railroads, Dated August 15, 1919.

Upon motion of Burton Mason, Esquire,

IT IS ORDERED that Defendants' Exhibits "G" and "H" may be withdrawn, and that photographic copies thereof be filed.

And thereupon, at the hour of 12:05 o'clock, P. M. IT IS ORDERED that the further trial of this case be continued to the hour of Two o'clock P. M., this date, to which time the parties and counsel are excused.

Subsequently, at the hour of Two o'clock, P. M., the parties and their respective counsel being present pursuant to recess, further proceedings of trial are had as follows:

DEFENDANTS' CASE CONTINUED: [132]

J. L. Fielding, heretofore sworn, is now recalled and further examined on behalf of the defendants.

And the defendants rest.

REBUTTAL:

L. G. Reif is now sworn and examined on behalf of the plaintiffs.

Plaintiffs' Exhibit No. 5, Statement of Rates, is now admitted in evidence.

Both sides rest.

Burton Mason, Esquire, now moves for Judgment for the Defendants in each case, and for the dismissal of the Complaints.

Whereupon, Frank L. Snell, Jr., Esquire, now moves for Judgment for plaintiffs in each case, as prayed in Plaintiffs' Complaints, and

IT IS ORDERED that said Motions be, and the same are hereby denied.

Upon motion of Burton Mason, Esquire,

IT IS ORDERED that Gerald Duffy, Esquire, be entered as associate counsel for the Defendants.

Thereupon, IT IS ORDERED that these cases be submitted upon briefs, and by the Court taken under advisement. [133]

[Title of Court and Cause—L-738]

MINUTE ENTRY OF THURSDAY, OCTOBER 13, 1932

Samuel White, Esquire, and Frank L. Snell, Jr., Esquire, appear as counsel for plaintiff. Burton Mason, Esquire, and Gerald Duffy, Esquire, appear as counsel for the defendant.

Frank L. Snell, Jr., Esquire, now moves to reopen this case for the purpose of introducing the testimony of Mr. Blaine, and

IT IS ORDERED that said Motion be, and the same is hereby denied, to which ruling and Order of the Court, the plaintiffs except.

Upon stipulation of respective counsel,

IT IS ORDERED that this case be set for oral argument, Monday, October 24, 1932, at the hour of ten o'clock, A. M. [134]

[Title of Court and Cause—L-738]

MINUTE ENTRY OF MONDAY, OCTOBER 17, 1932

IT IS ORDERED that the Order heretofore entered herein, setting this case for oral argument upon the Law and Facts, Monday, October 24, 1932, at the hour of ten o'clock, A.M., be, and the same is hereby vacated, and that this case be continued to be reset for oral argument upon stipulation of counsel. [135]

[Title of Court and Cause—Consolidated Cases.]

MINUTE ENTRY OF FRIDAY, OCTOBER 21, 1932

No appearance is made on behalf of the Plaintiffs. Messrs. Baker & Whitney, by Alexander B. Baker, Esquire, and Messrs. Chalmers, Fennemore & Nairn, by Thomas G. Nairn, Esquire, appear as counsel for the defendants.

IT IS ORDERED that this case be set for oral argument upon the Law and Evidence, Monday,

November 14, 1932, at the hour of ten o'clock, A. M. [136]

[Title of Court and Cause—Consolidated Cases.]

MINUTE ENTRY OF MONDAY, NOVEMBER 14, 1932

Samuel White, Esquire, and Messrs. Elliott & Snell, by Frank L. Snell, Jr., Esquire, appear as counsel for plaintiffs. Messrs. Chalmers, Fennemore & Nairn, by T. G. Nairn, Esquire; Messrs. Baker & Whitney, by Alexander B. Baker, Esquire; Gerald Duffy, Esquire, and Burton Mason, Esquire, appear as counsel for the defendants.

Pursuant to Trial heretofore had herein, argument is now had upon the Law and Facts.

Frank L. Snell, Jr., Esquire, opens said argument on behalf of the plaintiffs, and Burton Mason, Esquire, thereafter argues on behalf of the defendants.

And, thereupon, at the hour of 12:10 o'clock, P. M., IT IS ORDERED that further argument herein be continued to the hour of 1:00 o'clock, P. M., this date, to which time counsel are excused.

Subsequently, at the hour of 1:00 o'clock, P. M., respective counsel being present pursuant to recess, further [137] argument is had by Burton Mason, Esquire, and Gerald Duffy, Esquire.

And, thereupon, at the hour of 2:25 o'clock, P. M., IT IS ORDERED that further argument herein be continued to the hour of 2:30 o'clock, P. M., this date, to which time counsel are excused.

Subsequently, at the hour of 2:30 o'clock, P. M., respective counsel being present pursuant to recess, argument is now closed by Frank L. Snell, Jr., Esquire, of counsel for plaintiffs. [138]

[Title of Court and Cause—Consolidated Cases.]

MINUTE ENTRY OF THURSDAY, DECEMBER 29, 1932

These cases having heretofore been tried before the Court sitting without a Jury, a Jury having been expressly waived upon Stipulation of the parties in writing, submitted upon oral argument, and upon briefs, and by the Court taken under advisement, and the Court having duly considered the same, and being fully advised in the premises, the Court finds in favor of the plaintiffs and against the defendants, and

IT IS ORDERED that counsel for plaintiffs prepare Findings of Fact and Conclusions of Law, and that exceptions be entered on behalf of the defendants, and

IT IS FURTHER ORDERED that these cases be continued for hearing to determine the amount of attorneys' fees to be awarded counsel for plaintiffs. [139]

[Title of Court and Cause—Consolidated Cases.]

MINUTE ENTRY OF MONDAY,
JANUARY 9, 1933

Messrs. Elliott & Snell, by Frank L. Snell, Jr., Esquire, appear as counsel for plaintiffs. Messrs. Baker & Whitney, by Alexander B. Baker, Esquire, appear as counsel for the defendants.

Upon motion of said counsel for plaintiffs,

IT IS ORDERED that these cases be set for trial upon the matter of attorneys' fees, Tuesday, January 17, 1933, at the hour of ten o'clock, A. M. [140]

[Title of Court and Cause—Consolidated Cases.]

MINUTE ENTRY OF TUESDAY,
JANUARY 17, 1933

Upon agreement of counsel, these cases are consolidated and come on regularly for hearing this date, upon the matter of attorneys' fees.

Messrs. Elliott & Snell, by Frank L. Snell, Jr., Esquire, and Samuel White, Esquire, by George T. Wilson, Esquire, appear as counsel for plaintiffs.

Messrs. Chalmers, Fennemore & Nairn, by T. G. Nairn, Esquire; Messrs. Baker and Whitney, by Alexander B. Baker, Esquire, and A. B. Mason, Esquire, appear as counsel for the defendants.

Upon stipulation of counsel, the statement of Samuel White is read into the record on behalf of the plaintiffs.

Upon motion of Frank L. Snell, Jr., Esquire,

IT IS ORDERED that George T. Wilson, Es-

quire, be entered as associate counsel for plaintiffs.

Frank L. Snell, Jr., is sworn and examined on behalf of plaintiffs. [141]

A. B. Mason is sworn and examined on behalf of the defendants.

Both sides rest.

Whereupon, the cause is now submitted to the Court, and the Court having duly considered the same, and being fully advised in the premises,

IT IS ORDERED that plaintiffs' attorneys fees be fixed at twenty per cent (20%) of the amount of Judgment in each case, and that an exception be entered on behalf of the defendants. [142]

[Title of Court and Cause—Consolidated Cases.]

MINUTE ENTRY OF TUESDAY, JUNE 13, 1933

This being the time heretofore fixed for taxing plaintiff's costs herein, Messrs. Elliott and Snell, by Frank L. Snell, Jr., Esquire, appear for plaintiff, and Messrs. Baker and Whitney, by Alexander B. Baker, Esquire, appear for Defendants.

Upon motion of counsel for defendants, and upon the consent of counsel for plaintiff,

IT IS ORDERED that the taxing of costs herein be continued and reset for Monday, June 19, 1933, at the hour of 9:30 o'clock, A. M.

Upon motion of Alexander B. Baker, Esquire,

IT IS ORDERED that the Defendants' time be extended for a period of forty (40) days from and after this date, within which to prepare, serve and file Bill of Exceptions. [145]

[Title of Court and Cause.—L-738.]

MINUTE ENTRY OF MONDAY, JUNE 19, 1933

Messrs. Elliott and Snell, by Frank L. Snell, Jr., Esquire, and Samuel White, Esquire, appear for Plaintiff.

Messrs. Baker and Whitney, by Alexander B. Baker, Esquire, appear for the Defendants.

Objection to the decision of the Clerk in taxing plaintiff's costs is now made to the Court by said counsel for the defendants, and particularly to the items of attorneys' fees and certified copies of Rule V of the Interstate Commerce Commission, and

IT IS ORDERED that said objection be overruled, and that the decision of the Clerk in allowing said costs be, and the same is hereby affirmed, to which ruling and Order of the Court, the defendants except.

Upon motion of Alexander B. Baker, Esquire,

IT IS ORDERED that Stay of Execution of Judgment be extended for a period of forty (40) days from and after June 13, 1933. [146]

[Title of Court and Cause—No. L-569.]

MINUTE ENTRY OF MONDAY,
JANUARY 11, 1932.
(Tucson General Minutes)

ORDER TRANSFERRING CASE TO
PHOENIX DIVISION.

Upon stipulation of respective counsel, heretofore filed herein, and it appearing to the Court that the Honorable F. C. Jacobs, United States District Judge for the District of Arizona, has filed his consent thereto,

IT IS ORDERED that this case be transferred to the Phoenix Division of this Court for further proceedings. [149]

[Title of Court and Cause—No. L-844.]

MINUTE ENTRY OF MONDAY,
SEPTEMBER 12, 1932.

Messrs. Elliott & Snell, by Frank L. Snell, Jr., Esquire, appear as counsel for plaintiff. Messrs. Baker & Whitney, by Alexander B. Baker, Esquire, appear as counsel for the defendants.

Plaintiff's Motion to Set for Trial is now regularly called, and

IT IS ORDERED that this case be, and the same is hereby set for trial, Tuesday, October 11, 1932, at the hour of ten o'clock A. M. [154]

[Title of Court and Cause—No. L-844.]

MINUTE ENTRY OF THURSDAY, OCTOBER 13, 1932.

Samuel White, Esquire, and Frank L. Snell, Jr., Esquire, appear as counsel for plaintiff. Burton Mason, Esquire, and Gerald Duffy, Esquire, appear as counsel for the defendants.

Frank L. Snell, Jr., Esquire, now moves to reopen this case for the purpose of introducing the testimony of Mr. Blaine, and

IT IS ORDERED that said Motion be, and the same is hereby denied, to which ruling and Order of the Court, the plaintiff excepts.

Upon stipulation of respective counsel,

IT IS ORDERED that this case be set for oral argument, Monday, October 24, 1932, at the hour of ten o'clock, A. M. [155]

[Title of Court and Cause—No. L-844.]

MINUTE ENTRY OF MONDAY,
OCTOBER 17, 1932.

IT IS ORDERED that the Order heretofore entered herein, setting this case for oral argument upon the Law and Facts, Monday, October 24, 1932, at the hour of ten o'clock, A. M., be, and the same is hereby vacated, and that this case be continued to be reset for oral argument upon stipulation of counsel. [156]

[Title of Court and Cause—No. L-844.]

MINUTE ENTRY OF MONDAY,
JUNE 19, 1933.

Messrs. Elliott and Snell, by Frank L. Snell, Jr., Esquire, and Samuel White, Esquire, appear for Plaintiff.

Messrs. Baker and Whitney, by Alexander B. Baker, Esquire, appear for the Defendants.

Objection to the decision of the Clerk in taxing plaintiff's costs is now made to the Court by said counsel for the defendants, and particularly to the item of attorneys' fees, and

IT IS ORDERED that said objection be overruled, and that the decision of the Clerk in allowing said costs be, and the same is hereby affirmed, to which ruling and Order of the Court, the defendants except.

Upon motion of Alexander B. Baker, Esquire,

IT IS ORDERED that Stay of Execution of Judgment be extended for a period of forty (40) days from and after June 13, 1933. [159]

[Title of Court and Cause—No. L-844.]

MINUTE ENTRY OF MONDAY, JULY 24, 1933

IT IS ORDERED that the Judgment heretofore entered June 9, 1933, be corrected, and that said Judgment provide for attorneys' fees recoverable from the Defendant, Southern Pacific Company, a corporation, in the sum of Three Hundred Thirty Four and 31/100 Dollars ($334.31) instead of Three Hundred Fifty Nine and 98/100 Dollars ($359.98), in accordance with the Stipulation on file herein. [160]

[Title of Court and Cause—Consolidated Cases.]

MINUTE ENTRY OF MONDAY, JULY 10, 1933

IT IS ORDERED that Defendants may have until and including the 1st day of September, 1933, within which to serve and file Bill of Exceptions, in accordance with the Stipulation on file herein. [161]

[Title of Court and Cause—Consolidated Cases.]

MINUTE ENTRY OF WEDNESDAY, AUGUST 30, 1933

Upon motion of T. G. Nairn, Esquire, of counsel for Defendants, and upon his representation that said Motion is made upon Plaintiffs' request,

IT IS ORDERED that Plaintiffs' time within which to file proposed Amendments and Excep-

tions to Bill of Exceptions on file herein, be, and the same is hereby extended to and including September 9, 1933. [162]

[Title of Court and Cause—Consolidated Cases.]

BILL OF EXCEPTIONS.

BE IT REMEMBERED, that on or about the 11th day of October, 1932, the above entitled causes came on regularly for trial before the Honorable F. C. Jacobs, United States Judge in and for the District of Arizona, sitting without a jury, a jury trial having been expressly waived by written stipulation of the parties. Pursuant to oral stipulation of the parties duly expressed in open court, and by order of Court then and there made, said causes were duly consolidated for purposes of trial and decision, and were jointly tried upon a consolidated record. Plaintiffs appeared by their counsel, Samuel White and F. L. Snell, Jr., Esquires, of Phoenix, Arizona, and defendants by their counsel, Messrs. Baker & Whitney, and Chalmers, Fennemore & Nairn, of Phoenix, Arizona, and James E. Lyons, Gerald E. Duffy and Burton Mason, Esquires, of San Francisco, California. [163]

Thereupon, there was offered and received in evidence as Plaintiffs' Exhibit 1, a copy of the opinion and order of the Interstate Commerce Commission in Docket 16742 and associated cases, Traffic Bureau, Phoenix Chamber of Commerce, et al. v. The A. T. & S. F. Ry. Co., et al., 140 I. C. C. 171. A duly cer-

tified true and correct copy of said opinion and order in said Docket 16742 is attached as Exhibit "A" to the complaint of the plaintiffs on file in cause No. L-738-Phoenix; and to save repetition the same is hereby referred to and made a part hereof, with the same force and effect as if here set forth.

Thereupon, there was offered and received in evidence as Plaintiffs' Exhibit 2, a copy of an order for the payment of reparation made by the Interstate Commerce Commission under date of April 13, 1931, in Docket 16770 and associated cases, Bashford-Burmister Company v. The A. T. & S. F. Ry. Co., et al. A true and correct copy of said order so received as Exhibit 2 is annexed as Exhibit "B" to the complaint of the plaintiff in cause No. L-844-Phoenix; and to save repetition the same is hereby referred to and made a part hereof, with the same force and effect as if here set forth.

Thereupon, there was offered and received in evidence as Plaintiffs' Exhibit 3, a copy of an order for the payment of reparation made by the Interstate Commerce Commission under date of September 7, 1929, in Docket 17549, Phelps-Dodge Mercantile Company v. A. T. & S. F. Ry. Co., et al. A true and correct copy of said order so received as Exhibit 3 is annexed as Exhibit "C" to the complaint of plaintiffs in cause No. L-738-Phoenix; and to save repetition the same is hereby referred to and made a part hereof, with the same force and effect as if here set forth.

Thereupon, there was offered and received in evi-

dence as Plaintiffs' Exhibit 4, a true and correct copy of certain statements (also known as Rule V statements) showing shipments made to and received by plaintiff in cause No. L-844-Phoenix, upon which repara- [164] tion was and is claimed by said plaintiff. A full, true and correct copy of said Exhibit 4 is annexed as Exhibit "A" to the complaint of said plaintiff in cause No. L-844-Phoenix; and to save repetition the same is hereby referred to, and made a part hereof, with the same force and effect as if here set forth.

Thereupon, it was stipulated and agreed, by and between counsel for plaintiffs and defendants, that Exhibit "B" annexed to the plaintiffs' complaint in cause No. L-738-Phoenix, being the statements (also known as Rule V statements) showing the shipments made to and received by said plaintiffs in cause No. L-738-Phoenix, upon which reparation was and is claimed by said plaintiffs, might be considered in evidence, with the same force and effect as if physically introduced in evidence; and the same is accordingly referred to and made a part hereof, with the same force and effect as if here set forth.

Thereupon, it was further stipulated and agreed, by and between counsel for plaintiffs and defendants, that plaintiffs had duly made demand upon defendants for the payment of the amounts claimed as reparation, pursuant to the aforesaid reparation orders of said Commission; and that defendants had declined to comply with said demands.

It was further stipulated and agreed, by and between counsel for plaintiffs and defendants, that the aforesaid Rule V statements had been duly prepared in accordance with instructions of said Commission, for the purpose of showing detailed information respecting the shipments upon which reparation was and is claimed, that such detailed information shown thereon is correct, and that the copies of said Rule V statements here introduced in evidence by plaintiffs, either physically or by reference, were and are true and correct copies of the original statements transmitted to said Commission. Thereupon plaintiffs rested.

Thereupon, defendants moved the Court to render and enter an [165] order for a non-suit against the plaintiffs in each of said causes, and for the dismissal of the complaints, and for the entry of judgments against the plaintiffs and in favor of the defendants, upon the ground that the evidence introduced by plaintiffs failed to sustain the causes of action alleged in the complaints, or any cause of action against the defendants, and that said evidence showed affirmatively that the orders for reparation, upon which the complaints are based, were and are invalid, in that the Interstate Commerce Commission had no power or jurisdiction to make said orders, for the reason that the rates assessed upon said shipments, against which said Commission has undertaken to award reparation, had previously been approved as reasonable by said Commission, after full formal investigation, and/or were less in

amount than rates so approved, which remained in effect throughout the period of movement of said shipments without any change on the part of the defendants, or otherwise except as ordered or required by said Commission and/or the Director-General of Railroads, other than certain voluntary reductions. Said motion of defendants was denied and overruled by the Court, to which ruling defendants then and there duly excepted.

Thereupon, it was stipulated and agreed, by and between counsel for the respective parties, that the reports of the Interstate Commerce Commission in Ex Parte 74, Increased Rates 1920, 58 I. C. C. 220, and Reduced Rates 1922, 68 I. C. C. 676, might be considered in evidence, and referred to by the Court or either party, without the necessity that said reports, or either of them, be physically incorporated in the record.

Thereupon, counsel for plaintiffs and defendants joined in requesting the Court to make, enter and file written findings of fact and conclusions of law in said causes, prior to rendering judgments.

Thereupon there was offered in evidence by the defendants, and received as Exhibit "A", a true and correct copy of the report and order of the said Commission in Docket 6806, Arizona Corporation Commission v. A. T. & S. F. Ry. Co., et al., 34 I. C. C. 158, in words and figures as follows: [175]

EXHIBIT "A"

3024

INTERSTATE COMMERCE COMMISSION.

No. 6806.

ARIZONA CORPORATION COMMISSION

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, ET AL. [167]

No. 6806.

ARIZONA CORPORATION COMMISSION

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, ET AL.

Submitted November 30, 1914.

Decided May 25, 1915.

The complaint attacks as unreasonable the rates on sugar and sirup in straight and mixed carloads from producing and refining points in California to all points in Arizona. Subsequent to the hearing the carriers published reduced rates on these commodities to many points of destination in the state; Held:

1. Except as to the rates to Phoenix and Prescott, Ariz., the evidence of record does not show that the rates in effect at the time of the hearing on sugar and sirup in straight carloads, minimum weight 36,000 pounds, were unreasonable to a greater extent than the amounts of the reductions since made.
2. Rates to Phoenix and Prescott ordered to be established for the future upon a basis of not

more than 5 cents per 100 pounds higher than the rates to the junction points.

3. No finding is made as to the rates on sugar and sirup in mixed carloads.

F. A. Jones for Arizona Corporation Commission.

F. H. Wood for Southern Pacific Company and Arizona Eastern Railroad Company.

T. J. Norton and E. W. Camp for Atchison, Topeka & Santa Fe Railway Company.

Hawkins & Franklin for El Paso & Southwestern Company.

REPORT OF THE COMMISSION.

DANIELS, Commissioner:

The Arizona Corporation Commission brings the proceeding against all carriers which are engaged in the transportation of sugar and sirup from points of origin in the state of California to points of destination in the state of Arizona. It is alleged that the rates on sugar and sirup, in straight and mixed carloads, from all refining and shipping points in the state of California to all points in the state of Arizona are unjust and unreasonable. It is not alleged, however, that the rates under attack cause any discrimination.

Substantial reductions have been made in the rates on sugar and sirup from California to Arizona points as a result of two recent decisions of the Commission, one of which has been announced since [168] this proceeding was commenced. In Maier & Co. v. S. P. Co., 29 I. C. C., 103, a rate of 90 cents per 100 pounds for the transportation of sugar in carloads, minimum weight 36,000 pounds, from Los Angeles and Los Alamitos, Cal., to Ben-

son, Ariz., was found to be unreasonable and in violation of the fourth section of the act. It was held that the rate to this point was unreasonable in so far as it was in excess of 60 cents.

In conformity with this decision the rate from Los Angeles to Benson was made 60 cents, effective March 15, 1914, and by the same tariff reductions were made to 60 cents in all rates which had exceeded 60 cents from the same point to main-line stations of the Southern Pacific in Arizona. Substantial reductions were also made in the rates on sugar from San Francisco. Prior to March 15, 1914, rates from this point were graded from 85 cents at Yuma, Ariz., to 100 cents at Bowie, Ariz., minimum weight 36,000 pounds. Effective on that date the rates from San Francisco to all points in Arizona on the main line of the Southern Pacific were fixed at 70 cents with the same minimum, and they have now been reduced to 60 cents, thereby putting them upon the same basis as those from Los Angeles. San Francisco has also been accorded the Los Angeles rates to other Arizona points.

This complaint was filed on April 15, 1914. At that time certain applications for relief from the provisions of the fourth section which concerned some of the rates here involved were pending before the Commission. These applications were decided after the hearing of the issues in this case and are reported in Fourth Section Violations in Rates on Sugar, 31 I. C. C., 511. Reference is made to the report in that case for a full statement of the facts and issues there involved. It is sufficient here to state that our order in that case denied authority

to continue lower rates on sugar from San Francisco and other sugar-producing points in California to Trinidad, Colo., and other points east thereof, than the rates concurrently applicable on like traffic to intermediate points on the line of the Santa Fe. The order also denied authority to the Southern Pacific, El Paso & Southwestern, and the Chicago, Rock Island & Pacific to continue lower rates on sugar from San Francisco and other sugar-producing points in California to the Missouri River than the rates concurrently applicable to intermediate points west of Tucumcari, N. Mex. Pursuant to the orders made in Fourth Section Violations in Rates on Sugar, supra, the carriers filed new schedules of rates effective in November and December, 1914, which work substantial reductions in the rates which were in effect when this complaint was filed.

A further change in rates should be noted. Effective November 15, 1914, rates on sugar were established to practically all Arizona [169] points conditioned upon a minimum weight of 60,000 pounds, which rates were the same from all California producing points, and almost uniformly on a basis of 5 cents lower than the rates from Los Angeles to the same destinations upon the 36,000-pound minimum. A desire for these lower rates with the higher minimum was expressed by complainant's witnesses.

The following table, in which certain points are taken as representative of all points of destination in Arizona, shows the recent reductions in rates on sugar to which we have referred in the foregoing paragraphs. Rates are stated per 100 pounds:

To—	From Los Angeles, Cal., effective—			From San Francisco, Cal., effective—		
	Prior to Mar. 15, 1914.[1]	Mar. 15, 1914, or subsequently.[1]	Nov. 15, 1914, or subsequently.[2]	Prior to Mar. 15, 1914.[1]	Mar. 15, 1914, or subsequently.[1]	Nov. 15, 1914, or subsequently.[2]
Main-line Santa Fe stations:						
Kingman, Ariz.	$0.72	$0.60	$0.55	$0.82	$0.60	$0.55
Ashfork, Ariz.	.83	.60	.55	.93	.60	.55
Flagstaff, Ariz.	.92	.60	.55	1.00	.60	.55
Holbrook, Ariz.	1.00	.60	.55	1.00	.60	.55
Via Santa Fe, Prescott & Phoenix: Prescott, Ariz.	.83	.75	.70	.93	.75	.70
Main-line Southern Pacific stations:						
Yuma, Ariz.	.66	.60	.53	.85	.60	.55
Kim, Ariz.	.83	.60	.55	.93	.60	.55
Maricopa, Ariz.	.83	.60	.55	.93	.60	.55
Tucson, Ariz.	.83	.60	.55	.93	.60	.55
Benson, Ariz.	.90	.60	.55	1.00	.60	.55
Cochise, Ariz.	.90	.60	.55	1.00	.60	.55
Bowie, Ariz.	.90	.60	.55	1.00	.60	.55
Via branch line Southern Pacific: Nogales, Ariz.	.90	.82	.77	1.00	.82	.77
Via Arizona Eastern:						
Phoenix, Ariz.	.83	.75	.70	.93	.75	.70
Globe, Ariz.	1.30	1.00	.....	1.40	1.00	.....
Kelton, Ariz.	1.05	.75	.70	1.15	.75	.70
Via El Paso & Southwestern:						
Bisbee, Ariz.	.90	.60	.55	1.00	.60	.55
Douglas, Ariz.	.90	.60	.55	1.00	.60	.55
Via Arizona & New Mexico:						

Substantial reductions in the rates on sirup have also been recently made. Taking the stations named in the foregoing table the rates on sirup from Los Angeles in effect prior to March 15, 1914, compared with the present rates show the following reductions in cents per 100 pounds: To Yuma, from 66 to 53; to Kim, from 83 to 63; to Maricopa and Tucson, from 83 to 75; to Benson, Cochise, and Bowie, from 90 to 75; to Globe, from 130 to 115; to Kelton, from 105 to 90; to Bisbee and Douglas, from 90 to 75; to Clifton, from 121 to 106. The rates to Kingman, 72 cents, to Ashfork, Flagstaff, Holbrook, Phoenix, and Prescott, 75 cents, remain unchanged. It appears that the rate to Florence has been increased from 75 to 80 cents, and that the rate to Nogales has been increased from 90 to 97 cents. Relatively similar reductions have been made in the rates on sirup from [170] San Francisco. The minimum weight prescribed for the rates on sirup is 36,000 pounds. Rates have not been established for the minimum weight of 60,000 pounds, as in the case of sugar.

Prior to March 15, 1914, the rates on mixed carloads of sugar and sirup, minimum weight 36,000 pounds, from Los Angeles and San Francisco to Arizona points were substantially the same as the rates then in effect on sugar. In December, 1914, the commodity rates applicable to mixed carloads were canceled, leaving fifth-class rates applicable to all points in Arizona. To certain of these points the fifth-class rates were reduced, effective November

To—	From Los Angeles, Cal., effective—			From San Francisco, Cal., effective—		
	Prior to Mar. 15, 1914.[1]	Mar. 15, 1914, or subsequently.[1]	Nov. 15, 1914, or subsequently.[2]	Prior to Mar. 15, 1914.[1]	Mar. 15, 1914, or subsequently.[1]	Nov. 15, 1914, or subsequently.[2]
Main-line Santa Fe stations:						
Kingman, Ariz.	$0.72	$0.60	$0.55	$0.82	$0.60	$0.55
Ashfork, Ariz.	.83	.60	.55	.93	.60	.55
Flagstaff, Ariz.	.92	.60	.55	1.00	.60	.55
Holbrook, Ariz.	1.00	.60	.55	1.00	.60	.55
Via Santa Fe, Prescott & Phoenix: Prescott, Ariz.	.83	.75	.70	.93	.75	.70
Main-line Southern Pacific stations:						
Yuma, Ariz.	.66	.60	.53	.85	.60	.55
Kim, Ariz.	.83	.60	.55	.93	.60	.55
Maricopa, Ariz.	.83	.60	.55	.93	.60	.55
Tucson, Ariz.	.83	.60	.55	.93	.60	.55
Benson, Ariz.	.90	.60	.55	1.00	.60	.55
Cochise, Ariz.	.90	.60	.55	1.00	.60	.55
Bowie, Ariz.	.90	.60	.55	1.00	.60	.55
Via branch line Southern Pacific: Nogales, Ariz.	.90	.82	.77	1.00	.82	.77
Via Arizona Eastern:						
Phoenix, Ariz.	.83	.75	.70	.93	.75	.70
Globe, Ariz.	1.30	1.00	.....	1.40	1.00	.....
Kelton, Ariz.	1.05	.75	.70	1.15	.75	.70
Via El Paso & Southwestern:						
Bisbee, Ariz.	.90	.60	.55	1.00	.60	.55
Douglas, Ariz.	.90	.60	.55	1.00	.60	.55
Via Arizona & New Mexico:						
Clifton, Ariz.	1.21	.91	.86	1.31	.91	.86

1. Minimum weight, 36,000 pounds.

2. Minimum weight, 60,000 pounds.

Substantial reductions in the rates on sirup have also been recently made. Taking the stations named in the foregoing table the rates on sirup from Los Angeles in effect prior to March 15, 1914, compared with the present rates show the following reductions in cents per 100 pounds: To Yuma, from 66 to 53; to Kim, from 83 to 63; to Maricopa and Tucson, from 83 to 75; to Benson, Cochise, and Bowie, from 90 to 75; to Globe, from 130 to 115; to Kelton, from 105 to 90; to Bisbee and Douglas, from 90 to 75; to Clifton, from 121 to 106. The rates to Kingman, 72 cents, to Ashfork, Flagstaff, Holbrook, Phoenix, and Prescott, 75 cents, remain unchanged. It appears that the rate to Florence has been increased from 75 to 80 cents, and that the rate to Nogales has been increased from 90 to 97 cents. Relatively similar reductions have been made in the rates on sirup from [170] San Francisco. The minimum weight prescribed for the rates on sirup is 36,000 pounds. Rates have not been established for the minimum weight of 60,000 pounds, as in the case of sugar.

Prior to March 15, 1914, the rates on mixed carloads of sugar and sirup, minimum weight 36,000 pounds, from Los Angeles and San Francisco to Arizona points were substantially the same as the rates then in effect on sugar. In December, 1914, the commodity rates applicable to mixed carloads were canceled, leaving fifth-class rates applicable to all points in Arizona. To certain of these points the fifth-class rates were reduced, effective November

27, 1914. From Los Angeles to Yuma this reduction is from 66 to 53 cents; to Kim, from 83 to 63 cents; from San Francisco to Yuma the reduction is from 85 to 75 cents; to Kim, from 93 to 81 cents. The effect of these class-rate reductions is to make lower rates on the mixture of sugar and sirup to these two points than were formerly in effect. To certain other points the commodity rates formerly applicable were the same as the fifth-class rates. In the main, however, the cancellation of commodity rates applicable to mixed carloads of sugar and sirup has resulted in increased rates on this mixture.

An analysis of the changes made in the rates on sugar and sirup, as outlined in the foregoing paragraphs, shows that the rates now in effect to many Arizona points are substantially lower than when this proceeding was brought. It appears, also, however, that the rates to the main-line points which were formerly graded are now largely blanketed to all of these points. It is further to be noted that the destinations on branch lines have not been accorded the full reductions made to main-line points. The rate formerly in effect on sugar from Los Angeles both to Maricopa and Phoenix, with the minimum weight of 36,000 pounds, was 83 cents. The rates as reduced are now 60 and 75 cents, respectively, a differential of 15 cents to the branch-line point over the rate to the junction point on the main line.

Complainant's evidence, other than that relating to commercial conditions, consisted in the main of

exhibits comparing the rates to Arizona points which were in effect when this proceeding was brought with rates on sugar applicable to other movements. In view of the changes in the Arizona rates as above set forth, these exhibits are less persuasive upon the present adjustment of rates than upon the rates as established prior to those changes. Upon examination of all the evidence of record, we are of the opinion and find that the rates on sugar and sirup in straight carloads from points in California to points in Arizona in effect at the time of the hearing have not been shown to be unreasonable to a greater extent than the amounts of the reductions since made. In view of the fact, however, that the carriers have to a considerable extent disregarded distance as a [171] factor in the making of the California-Arizona sugar rates, having established extensive blankets both as to origin and destination points, it is the opinion of the Commission that the present rates to Phoenix via the Southern Pacific and the Arizona Eastern and to Prescott via the Santa Fe are unreasonable in so far as they exceed the rates to the junction points by more than 5 cents per 100 pounds, and that rates for the future should be established upon a basis of not more than 5 cents per 100 pounds over the junction point rates.

The facts of record being insufficient to warrant any finding as to the rates on mixed carloads of sugar and sirup, none will be made.

An order will be entered in accordance with the conclusions herein stated. [172]

ORDER.

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 25th day of May, A, D. 1915.

No. 6806.

ARIZONA CORPORATION COMMISSION

v.

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY; ARIZONA EASTERN RAILROAD COMPANY; ARIZONA & NEW MEXICO RAILWAY COMPANY; SOUTHERN PACIFIC COMPANY; EL PASO & SOUTHWESTERN COMPANY; AND SANTA MARIA VALLEY RAILROAD.

This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That the above-named defendants, according as they participate in the transportation, be, and they are hereby, notified and required to cease and desist, on or before August 15, 1915, and thereafter to abstain, from charging, demanding, collecting, or receiving their present rates for the transportation of sugar in carloads, minimum weight 36,000 pounds, from points in California to Prescott and Phoenix, Ariz., which said rates have been

found in said report to be unreasonable.

It is further ordered, That said defendants, according as they participate in the transportation, be, and they are hereby, notified, and required to establish, on or before August 15, 1915, upon notice to the Interstate Commerce Commission and to the general public by not less than 30 days' filing and posting in the manner prescribed by section 6 of the act to regulate commerce, and thereafter to maintain and apply to the transportation of sugar in carloads, minimum weight 36,000 pounds, from points in California to Prescott, Ariz., [173] via Ashfork, Ariz., rates which shall not exceed those contemporaneously in effect from the same points of origin to Ashfork by more than 5 cents per 100 pounds, and to Phoenix, Ariz., via Maricopa, Ariz., rates which shall not exceed those contemporaneously in effect to Maricopa by more than 5 cents per 100 pounds.

And it is further ordered, That this order shall continue in force for a period of not less than two years from the date when it shall take effect.

By the Commission.

[Seal] GEORGE B. McGINTY,
Secretary. [174]

Thereupon there was offered in evidence by defendants, and received as Exhibit "B", a true and correct copy of the report and order of said Commission in Docket 11532, Traffic Bureau, Phoenix Chamber of Commerce v. Director General, et al., 62 I. C. C. 412, in words and figures as follows: [176]

EXHIBIT "B"

No. 11532

TRAFFIC BUREAU, CHAMBER OF COMMERCE, PHOENIX, ARIZ., ET AL.

v.

DIRECTOR GENERAL, AS AGENT, SOUTHERN PACIFIC COMPANY, ET AL.

Submitted April 12, 1921. Decided June 22, 1921.

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1. Rates on sugar, in carloads, from California points to Phoenix, Ariz., found unreasonable. Reasonable rate prescribed for the future.
2. Following Phoenix Chamber of Commerce v. Director General, 62 I. C. C. 368, prayer for the establishment of through routes and joint rates from San Francisco, Calif., by way of Phoenix, to points on the Southern Pacific, Maricopa, Ariz., to El Paso, Tex., denied.

Roland Johnston, for complainants.

F. A. Jones for Arizona Corporation Commission, intervener.

E. W. Camp, Elmer Westlake, G. H. Baker, and M. A. Cummings for defendants.

REPORT OF THE COMMISSION.

Division 1, Commissioners McChord, Aitchison, and Lewis.

AITCHISON, Commissioner:

This case was made the subject of a proposed report by the examiner. Exceptions thereto were filed by defendants.

Complainants are the Traffic Bureau, Chamber of Commerce, Phoenix, Ariz., an organization of shippers and citizens of Phoenix, Hall-Pollock Company, and Haas-Baruch & Company, corporations, and the Arizona Grocery Company, a partnership.

The three firms named are engaged in the grocery business at Phoenix. By complaint filed June 14, 1920, they allege that the rates charged by defendants for the transportation of sugar from points in California to Phoenix, were and are unjust, unreasonable, unjustly discriminatory, and unduly prejudicial in violation of sections 1, 2, 3, and 4 of the interstate commerce act and section 10 of the federal control act. They ask us to prescribe just and reasonable rates for the future, to award reparation on all shipments moving subsequently to May 2, 1916, and to establish through routes and joint rates from San Francisco, Calif., by way of Phoenix, to Maricopa, Ariz., and points east thereof, on lines of the Southern Pacific Company, to and including El Paso, Tex. The Arizona Cor- [176] poration Commission intervened on behalf of complainants. The allegation of a fourth section violation was abandoned at the hearing. Rates are stated herein in amounts per 100 pounds.

Phoenix is the only point in Arizona common to the lines of the Atchison, Topeka & Santa Fe Railway and the Southern Pacific. It is located on the branch of the Santa Fe extending south from Ash Fork, Ariz., but is served by that carrier on traffic from California by means of a branch line known as the Parker cut-off, which leaves the main line

at Cadiz, Calif., and connects with the Ash Fork branch at Wickenburg, Ariz. Phoenix is served by the Southern Pacific through the medium of the Arizona Eastern Railroad, which it owns and with which it connects at Maricopa, a point on the main line 35 miles southerly from Phoenix. The short-line mileage from San Francisco to Phoenix is via the Santa Fe over the Parker cut-off; from Los Angeles, via the Southern Pacific lines.

Sugar is produced at various points in California. Hawaiian cane sugar is refined at San Francisco and at Crockett, a point 29 miles east of San Francisco on the Southern Pacific; beet sugar is produced at Alvarado, Betteravia, Spreckels, Los Alamitos, Dyer, Delhi, Oxnard, and other points in the central and southern portions of the state. For the purpose of stating rates to Arizona, the refining and producing points of origin in California are included in one group. Rates on sugar from California are also grouped as to destination points. On the main line of the Santa Fe a destination group extends from Yucca, Ariz., to El Paso, and on the main line of the Southern Pacific from Yuma, Ariz., to El Paso. Los Angeles is the nearest point in the California group to Phoenix, and San Francisco possibly the farthest. The distances to Phoenix via the Santa Fe are 489 and 800 miles, and via the Southern Pacific, 451 and 920 miles, respectively, from the two points of origin.

On May 1, 1916, the rates on sugar from the California group to Phoenix were 60 cents, minimum weight 60,000 pounds, and 65 cents, minimum weight

36,000 pounds. Contemporaneously rates from the California group to points in the destination groups described were 5 cents lower than the corresponding Phoenix rates. This difference of 5 cents in favor of main-line points was fixed by us in Arizona Corporation Commission v. A., T. & S. F. Ry. Co., 34 I. C. C., 158, in which we found the Phoenix rate of 75 cents, minimum 36,000 pounds, unreasonable to the extent that it exceeded, by more than 5 cents, the main-line rate to Maricopa. On June 25, 1918, these rates were increased 25 per cent, the main-line rates becoming 69 and 75 cents and the Phoenix rates 75 and 81.5 cents. Subsequently a flat increase of 22 cents was substituted for the percentage increases, and the rates to main-line points became 77 and 82 cents on November [177] 25, 1919, and to Phoenix, 82 and 87 cents on February 18, 1920. On February 29, 1920, defendants canceled the rates to main-line and branch-line points, including Phoenix, under the lower minimum weight published in connection with roads under federal control and, as to such roads, increased the Phoenix rate under the minimum weight of 60,000 pounds to 83.5 cents which, apparently, was done by advancing the 5-cent difference over main-line points to 6.5 cents. In schedules filed to become effective May 14, 1920, the carriers attempted to bring the rates of non-federal lines into harmony with those of the lines previously under federal control, but upon protest we suspended the items carrying such increases. In Sugar from California Points to Arizona, 58 I. C. C. 737, we held that the cancellation of the 36,000 pound

minimum was justified and vacated the order of suspension. The present rates, including the general increases authorized by us on July 29, 1920, are 96.5 cents to main-line points and $1.045 to Phoenix, minimum weight 60,000 pounds. The Phoenix rate applies to practically all points on the Arizona Eastern north of Maricopa and to all points on the branch line of the Santa Fe south of Ash Fork and as far west as Parker, Ariz. There is no movement of sugar from California through Phoenix to points beyond taking lower rates.

Complainants admit that the grouping of California sugar-producing points is advantageous, as it gives them the benefit of a wide purchasing market on a uniform rate. They contend, however, that the rates to Phoenix are unreasonable, in comparison with lower rates from the California group to points involving hauls for distances which are greatly in excess of those to Phoenix. In the subjoined statement the revenues per car, per ton-mile, and per car-mile yielded by the rates to Phoenix are compared with revenues produced by certain of the rates cited by complainants. The rates shown include the general increases authorized by us on July 29, 1920.

From—	To—	Distance.	Rate per 100 pounds.	Revenue.		
				Per car.	Per ton-mile.	Per car-mile.
		Miles.			Mills.	Cents.
Los Angeles, Calif.	Phoenix, Ariz.	451	[1]$1.045	$627.00	46.3	139
San Francisco, Calif.	do	800	[1]1.045	627.00	26.1	78.3
Betteravia, Calif.	do	655	[1]1.045	627.00	31.9	95.7
Do	El Paso, Tex.	1,020	[1].965	579.00	18.9	56.7
New Orleans, La.	do	1,192	[2]1.080	388.80	18.1	32.6
San Francisco, Calif.	St. Paul, Minn.	2,154	[1]1.025	615.00	10	28.6
Los Angeles, Calif.	Chicago, Ill.	2,231	1.09525	657.00	9.8	29.4

1. Minimum weight 60,000 pounds.

2. Minimum weight 36,000 pounds.

Defendants take the position that the rates on sugar from California producing points to the central and eastern sections of the [178] country are on a subnormal basis due to the necessity of marketing the California product, which greatly exceeds local consumption, in competition with sugar refined at New Orleans and Atlantic seaboard points; that a normal basis of rates would prevent the movement of California sugar because of the great disparity in distances from the competing refineries to the common markets; and that intermediate main-line points are given the benefit of these extremely low competitive rates. They attempt to justify the present rates to Phoenix on the grounds that the volume of movement is small and that market conditions present at El Paso and the other points cited by complainant are not met with at Phoenix. They argue that we recognized the potency of market competition in Fourth Section Violations in Rates on Sugar, 31 I. C. C., 511, by permitting the maintenance of lower rates on sugar from California to Missouri River points than those contemporaneously in effect to intermediate points on the Rock Island east of Tucumcari, N. Mex., in connection with routing, Southern Pacific to El Paso, El Paso & Southwestern to Tucumcari, Rock Island beyond. In that case we required the Southern Pacific to hold the El Paso rate from California as maximum at intermediate points, and denied the Santa Fe authority to charge lower rates from California to Trinidad, Colo., and points east thereof than it contemporaneously maintained to inter-

mediate points. Accordingly, these carriers reduced the main-line rates in Arizona and New Mexico to the level of the rates to El Paso and Trinidad, respectively.

A partial list of the shipments on which reparation is sought shows that 48 carloads moved during the period June, 1919, to August, 1920, inclusive, 34 being routed via Southern Pacific and 14 via Santa Fe. A statement filed by the defendants shows that during the year 1916, 1917, 1919, and the first six months of 1920, 348 cars aggregating 9,423 tons moved from California points to Arizona via Santa Fe, of which 78 cars aggregating 2,229 tons moved to Phoenix.

From Betteravia, which may be taken as fairly representative of the California group, the present rate to Phoenix yields, for a distance of 655 miles, revenues of $627 per car, 95.7 cents per car-mile, and 31.9 mills per ton-mile upon the basis of the tariff minimum weight of 60,000 pounds. A substantial volume of sugar moves from California to Phoenix in carloads. While, no doubt, relatively lower rates are justified to more distant points where the force of market competition is controlling, nevertheless, Phoenix is entitled to rates, which, measured by present-day standards, are just and reasonable. If, however, the rates to competitive points are remunerative, then clearly the rates to Phoenix are excessive, even after giving due con- [179] sideration to the volume of traffic handled to the points in question, and the character of the haul into Arizona. The rate of 96.5 cents

Defendants take the position that the rates on sugar from California producing points to the central and eastern sections of the [178] country are on a subnormal basis due to the necessity of marketing the California product, which greatly exceeds local consumption, in competition with sugar refined at New Orleans and Atlantic seaboard points; that a normal basis of rates would prevent the movement of California sugar because of the great disparity in distances from the competing refineries to the common markets; and that intermediate main-line points are given the benefit of these extremely low competitive rates. They attempt to justify the present rates to Phoenix on the grounds that the volume of movement is small and that market conditions present at El Paso and the other points cited by complainant are not met with at Phoenix. They argue that we recognized the potency of market competition in Fourth Section Violations in Rates on Sugar, 31 I. C. C., 511, by permitting the maintenance of lower rates on sugar from California to Missouri River points than those contemporaneously in effect to intermediate points on the Rock Island east of Tucumcari, N. Mex., in connection with routing, Southern Pacific to El Paso, El Paso & Southwestern to Tucumcari, Rock Island beyond. In that case we required the Southern Pacific to hold the El Paso rate from California as maximum at intermediate points, and denied the Santa Fe authority to charge lower rates from California to Trinidad, Colo., and points east thereof than it contemporaneously maintained to inter-

mediate points. Accordingly, these carriers reduced the main-line rates in Arizona and New Mexico to the level of the rates to El Paso and Trinidad, respectively.

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from California is carried on the main line of the Southern Pacific for a distance of 400 miles east of Maricopa. The application of the same rate to Phoenix, but 35 miles distant from Maricopa does not appear to be unreasonable. The Southern Pacific and the Arizona Eastern are properly treated as one line in this instance. Pacific Creamery Co. v. S. P. Co., 42 I. C. C., 93, 96.

Complainants contend that the maintenance of rates from California of $1.045 to Phoenix and 96.5 cents to Tucson is unduly prejudicial to Phoenix, to the undue preference and advantage of Tucson. The record shows that Phoenix jobbers sell sugar at several points in territory contiguous to both Phoenix and Tucson, in competition with jobbers located at the latter point. While there is an indication that in some instances the Phoenix jobbers must shrink their profits to compete with Tucson, there is no evidence to show that this results from the difference in rates from California to the two competing points.

Complainants' request for the establishment of through routes and joint rates from San Francisco by way of Phoenix to Maricopa and points east thereof on the lines of the Southern Pacific to and including El Paso is substantially the same as was made in Phoenix Chamber of Commerce v. Director General, 62 I. C. C., 368, and the evidence is identical by reason of the stipulation into this record of the testimony there introduced. In that case we found that the proposed arrangement had not been shown to be necessary or in the public in-

terest and denied the petition. There is no basis for a different finding on this record.

We find that the rates attacked were, are, and for the future will be, unreasonable to the extent that they exceeded, exceed, or may exceed 96.5 cents. There is no evidence of record that complainants made shipments of sugar from California points to Phoenix, and paid and bore charges thereon at rates higher than those herein found reasonable. In the event that such shipments were made, complainants should file statements under rule V of the Rules of Practice, showing the details of such shipments, accompanied by appropriate proof in the form of an affidavit that the shipments were made and that the freight charges were paid and borne by complainants. If defendants object to proof in the form of an affidavit they may request a further hearing with respect to the subject matter thereof.

The prayer for a through route and joint rates from San Francisco by way of Phoenix to Maricopa and points east thereof on the line of the Southern Pacific, to and including El Paso, is denied.

An appropriate order will be entered. [180]

ORDER.

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 1, held at its office in Washington, D. C., on the 22d day of June, A. D. 1921.

No. 11532.

Traffic Bureau of the Chamber of Commerce, Phoenex, Ariz.; Hall-Pollock Company, Phoenix, Ariz.; Haas-Baruch & Company, Incorporated, Phoenix, Ariz.; The Melczer Company, Phoenix, Ariz.; and The Arizona Grocery Company, Phoenix, Ariz.

v.

James C. Davis, Director General of Railroads, as Agent; Southern Pacific Company; Arizona Eastern Railroad Company; and The Atchison, Topeka and Santa Fe Railway Company.

This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and said Division having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That the above-named defendants, according as they participate in the transportation be, and they are hereby, notified and required to cease and desist, on or before September 17, 1921, and thereafter to abstain, from publishing, de-

manding, or collecting their present rates for the transportation of sugar in carloads from California points to Phoenix, Ariz.

It is further ordered, That said defendants, according as they participate in the transportation, be, and they are hereby, notified and required to establish, on or before September 17, 1921, upon notice to this Commission and to the general public by not less than five days' filing and posting in the manner prescribed in section 6 of the interstate commerce act, and thereafter to maintain and apply to the transportation of sugar in carloads from California points to Phoenix, Ariz., rates which shall not exceed 96.5 cents per 100 pounds.

It is further ordered, That this order shall continue in force until the further order of the Commission.

By the Commission, Division 1.

[Seal] GEORGE B. McGINTY,
Secretary. [181]

Thereupon there was offered in evidence by defendants and received as Exhibit "C", a true and correct copy of the report and order of said Commission in Docket 11442, Traffic Bureau, Douglas Chamber of Commerce, etc. v. A. T. & S. F. Ry. Co., et al., 64 I. C. C. 405, in words and figures as follows: [197]

EXHIBIT "C"

7236

Interstate Commerce Commission

No. 11442

TRAFFIC BUREAU OF DOUGLAS CHAMBER OF COMMERCE AND MINES

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.

Submitted July 11, 1921. Decided November 3, 1921.

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1. Class and commodity rates from points on lines of defendants in California to Douglas, Ariz., found not unreasonable or unjustly discriminatory.
2. Class and commodity rates from points in California on lines of defendants to Douglas, found unduly prejudicial to the extent that they exceed corresponding rates contemporaneously in effect from the same points of origin to Bisbee, Ariz., and to certain cross-country points on the Southern Pacific in Arizona and New Mexico.
3. Commodity rates from points on lines of defendants in Oregon and Washington, and points basing thereon, to Douglas, applicable via California junctions, found unduly prejudicial, to the extent that they exceed corresponding rates contemporaneously in effect via California junctions from the same points of origin to El Paso, Tex., and Bisbee.

E. R. Raumaker for complainant.

F. C. Tockle for El Paso Chamber of Commerce; Roland Johnston for Traffic Bureau, Chamber of Commerce, Phoenix, Ariz.; and B. D. Woodward for Murray & Layne Company, interveners.

J. L. Stewart, Boyle & Pickett, E. W. Camp, G. H. Baker, Fred H. Wood, Elmer Westlake, and C. W. Durbrow, for defendants.

REPORT OF THE COMMISSION.

Division 4, Commissioners Meyer, Daniels, Eastman, and Potter.

EASTMAN, Commissioner:

No exceptions were filed to the report proposed by the examiner. We have reached conclusions differing but slightly from those which he recommended.

Complainant is an organization of shippers and receivers of freight located at and in the vicinity of Douglas, Ariz. It alleges that the class rates, and commodity rates, except on fresh fruits and vegetables, from points on the lines of defendants in California, [183] Oregon, Washington, Idaho, Montana, Utah, Nevada, and British Columbia to Douglas are unjust, unreasonable, unjustly discriminatory, and unduly prejudicial. The Murray & Layne Company and the Traffic Bureau, Chamber of Commerce, Phoenix, Ariz., intervened on behalf of complainant. Petitions of intervention on behalf of defendants were filed by the El Paso Chamber of Commerce and by the El Paso Sash & Door Company. The latter, however, did not participate in

the hearing. We are asked to prescribe reasonable and nonprejudicial rates for the future. Rates herein are stated in amounts per 100 pounds, and do not include the general increases of 1920.

Complainant's contentions are that the importance of Douglas, as the jobbing and mining center of southern Arizona and New Mexico and the gateway to ore regions in Mexico, together with its location west of El Paso, Tex., entitle it to lower rates than El Paso from points in California; that, being on the main line of the El Paso & Southwestern, its rates should not exceed those maintained to Bisbee, Ariz., a branch-line point near by; that from San Francisco, Los Angeles, and points grouped therewith its rates are unduly high in comparison with the rates to Tucson, Willcox, and Bowie, Ariz., and to Deming, N. Mex.; that from points in Oregon, Washington, Idaho, Montana, and British Columbia, hereinafter referred to as the northwest, its rates should not exceed those in effect to El Paso; that joint rates should be established from all points in California on the Atchison, Topeka & Santa Fe, hereinafter called Santa Fe, to Douglas via Colton, Calif., or Phoenix, Ariz.; and that there are no circumstances or conditions which justify the publication of joint rates to El Paso and not to Douglas.

While the class and commodity rates from points in the northwest were put in issue, complainant stated at the hearing that if commodity rates were established from that territory to Douglas on the El Paso basis, but not to exceed the rates contemporaneously maintained to Bisbee, this phase of the complaint would be satisfied. Accordingly the class rates from the northwest will not be considered.

Douglas is situated in the extreme southeastern part of Arizona near the Mexican border on the main line of the El Paso & Southwestern, 217 miles west of El Paso and 124 miles southeast of Tucson, the western junction of that carrier with the Southern Pacific. It is 22 miles east of Osborn, Ariz., from which point a branch line of the El Paso & Southwestern extends north 7 miles to Bisbee. The Southern Pacific is the short line from Tucson to El Paso. The line [184] of the El Paso & Southwestern is somewhat longer, as it dips down to the Mexican border. Douglas is in competition with Tucson and Bisbee, and with Willcox, Bowie, and other cross-country points on the Southern Pacific, 60 to 80 miles distant by air line, for the trade of the intervening territory.

In 1888 the Arizona & South Eastern was constructed from Bisbee to Fairbank, Ariz., and about 1894 it was extended to Benson, Ariz., where connection was made with the Southern Pacific. Some years later the Southwestern Railroad of Arizona was built from Don Luis, Ariz., to Douglas, thus providing a through route from Benson to Douglas. In 1901 these lines were consolidated under the name of the El Paso & Southwestern, which in 1902 was extended into El Paso. In the same year the right of way was changed in such a way as to make Bisbee a branch-line point.

In 1901 rates between Douglas and California points were made by double combination on Benson and Don Luis. In 1903 joint class and commodity rates were established between points in California and stations on the El Paso & Southwestern, based

on the combination of locals on Fairbank. The class rates were uniformly 15 cents higher to Douglas than to Bisbee. This basis continued until 1913 when the El Paso & Southwestern was extended into Tucson, thus providing a new route for the interchange of traffic with the Southern Pacific, at which time, with a few exceptions, rates applicable from California points to El Paso via the Southern Pacific were met by the El Paso & Southwestern, and held as maxima at Douglas and all other intermediate points, Tucson to El Paso.

While rates from the east are considerably higher to Douglas than to El Paso, rates from California are either the same to both points or slightly lower to Douglas, and certain rates from the northwest are considerably higher to Douglas than to El Paso. Complainant contends that Douglas is entitled to the same advantage on traffic from the west that El Paso has on traffic from the east, particularly in the case of the shorter hauls. While the Murray & Layne Company strongly supports this contention, the El Paso Chamber of Commerce urges that no changes of this character are warranted, since Douglas and El Paso have had practically the same rates from the west for several years, and business has become adjusted to these conditions.

Complainant compares the class rates from San Francisco and Los Angeles, representative California points of origin, to Douglas, with the corresponding rates to Tucson, Willcox, Deming, and El Paso, typical distributing points which compete with Douglas. Complainant's comparisons, together with class rates from the same points of [185] origin to certain other destinations near Douglas, are shown in the subjoined statement:

Haul	Distance	Classes.									
		1	2	3	4	5	A	B	C	D	E
San Francisco and group to—	Miles	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.
Tucson, Ariz.	971	237.5	196.5	171.5	142.5	116.5	116.5	95	81.5	75	65
Benson, Ariz.	1,020	269	225	200	167.5	137.5	137.5	114	99	90	76.5
Fairbank, Ariz.	1,038	269	225	200	171.5	141.5	141.5	115	99	90	77.5
Willcox, Ariz.	1,062	269	225	200	181.5	147.5	156.5	122.5	104	94	80
Bowie, Ariz.	1,085	269	225	200	181.5	147.5	159	126.5	104	96.5	81.5
Olga, Ariz.	1,094	269	225	200	181.5	147.5	159	130	104	97.5	82.5
Lordsburg, N. Mex.	1,135	269	225	200	181.5	147.5	159	134	104	100	87.5
Deming, N. Mex.	1,195	269	225	200	181.5	147.5	159	134	104	100	87.5
El Paso, Tex.[1]	1,283	294	250	200	181.5	147.5	159	134	104	100	87.5
Do.[2]	1,312										
Douglas, Ariz.	1,095	294	250	200	181.5	147.5	159	130	104	97.5	82.5
Bisbee, Ariz.	1,080	294	250	200	181.5	147.5	159	126.5	104	95	81.5
Osborn, Ariz.	1,073	294	250	200	181.5	147.5	159	126.5	104	95	80

Haul	Distance	Classes.									
		1	2	3	4	5	A	B	C	D	E
Los Angeles and group to—	Miles	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.
Tucson, Ariz.	502	206.5	171.5	152.5	124	104	104	82.5	69	62.5	52.5
Benson, Ariz.	551	237.5	204	181.5	149	125	125	101.5	86.5	77.5	64
Fairbank, Ariz.	570	237.5	204	182.5	152.5	129	129	102.5	86.5	77.5	65
Willcox, Ariz.	593	237.5	204	182.5	167.5	135	144	110	92.5	81.5	67.5
Bowie, Ariz.	617	237.5	204	182.5	167.5	135	146.5	114	94	84	69
Olga, Ariz.	625	237.5	204	182.5	167.5	135	146.5	117.5	95	85	70
Lordsburg, N. Mex.	667	237.5	204	182.5	167.5	135	146.5	124	104	94	75
Deming, N. Mex.	726	237.5	204	182.5	167.5	135	146.5	129	104	94	75
El Paso, Tex.[1]	814	294	250	189	167.5	135	146.5	129	104	94	82.5
Do.[2]	843										
Douglas, Ariz.	626	285	245	189	167.5	135	146.5	117.5	95	85	70
Bisbee, Ariz.	611	275	236.5	189	167.5	135	146.5	114	92.5	82.5	69
Osborn, Ariz.	604	272.5	234	189	167.5	135	146.5	114	92.5	82.5	67.5

[1] Via Southern Pacific.

[2] Via Southern Pacific and El Paso & Southwestern

On traffic to the above points the San Francisco rate is blanketed over an origin territory about 400 miles in length, while the Los Angeles rate covers points within a radius of about 125 miles. Complainant not only contends that the rates to Douglas are too high from all points in these groups, but that greater reductions should be made from points in the eastern portion of the originating territory than from points in the western portion. This extensive grouping of points of origin gives interior points the benefit of many markets in Pacific coast territory. Moreover, any change in the basis to Douglas, such as is suggested, would result almost inevitably in a similar disturbance of the rates to many other points in Arizona and the southwest, which rates are not in issue here. The evidence of complainant as to the desirability of breaking up these origin groups is too slight to warrant findings of such far-reaching importance.

As the above table shows, destination points are also extensively grouped, rates from San Francisco and Los Angeles to El Paso being blanketed back, in many instances, to and beyond Douglas. The distance Los Angeles to Douglas is 74.2 per cent of the distance [186] Los Angeles to El Paso via Southern Pacific, Tucson, El Paso & Southwestern beyond, and 77 per cent of the distance over the direct line of the Southern Pacific, while the class rates from Los Angeles to Douglas range from 84.7 to 100 per cent of the rates to El Paso. From San Francisco the distances to Douglas are 83.5 and 85.4 per cent of the respective distances to El Paso,

while the Douglas rates vary from 94.3 to 100 per cent of the El Paso rates. Complainant insists that the factor of distance should be given more weight in this destination adjustment. Defendants assert that the San Francisco-El Paso rates are depressed by the rates from St. Louis. There is little doubt but that the rates to El Paso are subject to certain competitive influences which do not affect the rates to Douglas.

Class rates from the San Francisco and Los Angeles groups are generally blanketed to points on the line of the Southern Pacific between Benson and Deming, the extent of the blankets varying with the different classes and narrowing as the lower classes are reached. The first five classes are grouped from San Francisco for average distances of about 240 miles, and from Los Angeles for average distances of about 215 miles. For example, from San Francisco the first-class rate is blanketed from Amole, Ariz., to Afton, N. Mex., a distance of 239 miles; from Los Angeles the first-class rate is blanketed from Amole to Carne, N. Mex., a distance of 199 miles. The mean point of the blankets is near Lordsburg, N. Mex., this point being 41 miles farther from the origin territory than is Douglas. From San Francisco, as will be noted from the foregoing table, the rates on classes D and E are higher to Lordsburg than to Douglas, while on the first two classes the reverse is true. The other classes are the same. From Los Angeles classes B, C, D, and E are higher to Lordsburg than to Douglas, while the first three classes are considerably lower. The intermediate

classes, 4, 5, and A, are the same to both destinations. From both San Francisco and Los Angeles the first five classes are blanketed from Willcox to Deming, a distance of 133 miles. From Los Angeles classes 1, 2, and 3 are 47.5, 41, and 6.5 cents higher, respectively, to Douglas than to Lordsburg; and from San Francisco classes 1 and 2 are each 25 cents higher to Douglas. The defendants offered no explanation of these inconsistencies.

In the following statement the differences in the rates from California, Douglas under El Paso, and Los Angeles under San Francisco are compared with similar differences in connection with the rates to Lordsburg: [187]

	Classes.									
	1	2	3	4	5	A	B	C	D	E
From Los Angeles:										
Douglas under El Paso	9	5	0	0	0	0	11.5	9	9	12.5
Lordsburg under El Paso	56.5	46	6.5	0	0	0	5	0	0	7.5
From San Francisco:										
Douglas under El Paso	0	0	0	0	0	0	4	0	2.5	5
Lordsburg under El Paso	25	25	0	0	0	0	0	0	0	0
Los Angeles under San Francisco:										
To Douglas	9	5	11	14	12.5	12.5	12.5	9	12.5	12.5
To Lordsburg	31.5	21	17.5	14	12.5	12.5	10	0	6	12.5

From the above comparisons it will be observed that the spread between the rates to Douglas and the rates to El Paso, where there is any spread, is greatest in the lower classes, which is contrary to accepted principles of rate making. The reverse is true of the Lordsburg rates. These discrepancies are reflected in the differences between the San Francisco and Los Angeles rates to Douglas. The distance to Douglas from San Francisco exceeds that from Los Angeles by 469 miles. To Lordsburg rates from Los Angeles range from 31.5 cents, first class, to nothing at class C under the San Francisco rates. Moreover, to stations on the El Paso & Southwestern, Tucson to Osborn, including Bisbee, the first-class rates from Los Angeles range from 19 to 31.5 cents under the corresponding rates from San Francisco. Defendants urge that rates from northern California to Douglas are affected by water competition between San Francisco and Los Angeles. However, this fact does not explain the inconsistency between the Douglas rates on the three highest classes and corresponding rates to comparable Southern Pacific and El Paso & Southwestern points. Water competition should affect like rates similarly to all points in the same general territory.

Complainant compares the revenues per ton-mile yielded by the first-class rates from San Francisco and Los Angeles to Douglas with earnings under the corresponding rates to Tucson, Willcox, Deming, and El Paso, as follows:

From—	To Tucson.	To Willcox.	To Douglas.	To Deming.	To El Paso.
	Mills	Mills	Mills	Mills	Mills
Los Angeles	82.27	80.10	91.05	65.43	[1]69.75 [2]72.23
San Francisco	48.92	50.66	53.70	45.02	[1]44.82 [2]45.83

1. Via El Paso & Southwestern. 2. Via Southern Pacific.

The distances from California points to Douglas range from 500 to 1,200 miles. The haul to Douglas involves one additional line not [188] required in the movement to cross-country points on the Southern Pacific. Defendants contend that this fact alone is sufficient to warrant the higher basis at Douglas. They do not explain why this fact, if controlling, affects only a few of the higher classes, nor why the rates in some of the lower classes are less to Douglas than to Deming and certain other of the cross-country points. They offered no evidence to show that the added line to Douglas involves an increase in the cost of service over that to comparable Southern Pacific points, and the record discloses no other transportation conditions which would warrant the maintenance of higher rates to Douglas. As said in Coakley v. Director General, 59 I. C. C., 141, 144, "the mere fact that one haul is two-line and another one-line does not in and of itself justify a higher charge for the two-line haul." It is well established that for distances in excess of 500 miles the fact that the service is by two lines is largely negligible. Pacific Creamery Co. v. S. P. Co., 42 I. C. C., 93, 96.

From the facts of record it seems clear that the rates to Douglas on classes 1 and 2 from the San Francisco group and classes 1, 2, and 3 from the Los Angeles group are unduly prejudicial to Douglas, to the undue preference of Willcox, Bowie, Deming, and other competing cross-country points on the Southern Pacific to which the corresponding class rates are blanketed.

Complainant's main contention as to commodity rates is that the location of Douglas, 217 miles west of El Paso, entitles it to rates proportionately lower than are contemporaneously applicable to El Paso. It shows that rates from the east on various commodities, including canned goods, sugar, and soap, are considerably higher to Douglas than to El Paso, and urges that the converse should be true on traffic from the west.

Commodity rates to Douglas are generally the same from both Los Angeles and San Francisco, and in some instances they apply also from Portland, Oreg. Except to points on the El Paso & Southwestern, the blankets of origin on certain commodities extend to Seattle, Tacoma, and other Washington points. The rates in many instances are blanketed, as to points of destination, practically across the country. Rates of 90.5 cents on canned goods and 87.5 cents on canned salmon are blanketed from Gila, Ariz., to the Atlantic seaboard; and the rate of $1.065 on dried fish extends east from Maricopa, Ariz., in similar manner. Rates on canned milk, beans, sugar, and coffee are the same from San Francisco and Los Angeles to Douglas, El Paso,

and beyond. In a few instances commodity rates from San Francisco and Los Angeles are graded to Douglas and other points in the same general territory. [189]

From the numerous comparisons submitted it appears that the commodity rates from California to Douglas, while higher in some instances than those to competing points, are generally the same. As mining is the principal industry of this section, there is a considerable movement of mine timbers and high explosives from California to Bisbee and Douglas. The rate on mine timbers, from Los Angeles is 27 cents to Bisbee and 32.5 cents to Douglas; from San Francisco the rate is 39 cents to Bisbee and 48.5 cents to Douglas. On high explosives the rate is $2.43 from San Francisco to Douglas and $2.365 to Bisbee. Obviously Douglas is at a disadvantage in the distribution of these commodities in competition with Bisbee. Similar adjustments obtain in connection with a few other commodities. The record shows that there are certain commodities, such as salt and rough timbers, which take higher rates from California to Douglas than to cross-country points on the Southern Pacific which compete with Douglas in the intermediate territory.

Defendants state that the rates to all points on the El Paso & Southwestern are made on the lowest combination of locals, the transcontinental rates being held as maxima to avoid fourth section violations, and this, they contend, gives that section better rates than it is rightfully entitled to. They

deny any intention of favoring Bisbee over Douglas, and explain that the rate adjustment to Bisbee was made when it was a main-line point; that when Bisbee became a branch line point, its rates were allowed to remain, in most instances, on the main line basis. They urge that the length of time that the adjustment has been in effect justifies its continuance; that the rates to Bisbee are reasonable and should not be disturbed; and that the rates to Douglas, because of the greater distance, may reasonably be higher.

Traffic from the west destined to Bisbee must be switched out of main-line trains at Osborn, or Don Luis and hauled over a branch line about 7 miles in length, with a maximum grade of 3 per cent. The altitudes of Osborn, Bisbee, and Douglas are 4,675, 5,300, and 3,966 feet, respectively. The haul from Osborn to Douglas is down grade practically all the way. From these facts it is clear that the additional distance of 15 miles, Douglas to Bisbee, does not warrant a difference in the rates from California for distances ranging from 500 to 1,200 miles. And the record discloses no good reason why in those few instances where higher rates apply to Douglas than to Lordsburg and other cross-country points taking the same rates, a like parity should not be brought about.

This same general situation obtains with respect to a number of commodity rates from the northwest, Bisbee, in such cases, being [190] accorded lower rates than Douglas. Furthermore, as joint rates

are published from the northwest on certain commodities to El Paso via the Southern Pacific direct, and are not applicable in connection with the El Paso & Southwestern, it happens in these instances that the rates to Douglas, being on a combination basis, are higher. For example, from Seattle, Tacoma, and other northwestern points to El Paso, Southern Pacific points in Arizona and New Mexico, and points east thereof, the rates on canned goods are 90.5 cents, minimum 60,000 pounds, and $1.065, minimum 40,000 pounds, while the rates to Douglas are 15 cents higher. From Anacortes, Bellingham, Blaine, and other Washington points the rate on canned salmon to El Paso is 87.5 cents. This rate is blanketed from Colton, Calif., to the Atlantic seaboard, being applicable to Tucson, Willcox, Bowie, and other Southern Pacific points which compete with Douglas, while to the latter point the rates are considerably higher, being made on Portland combination. The rates on various other commodities are similarly adjusted. As hereinbefore stated, complainant agreed that as to rates from the northwest its complaint would be satisfied if Douglas were accorded the El Paso basis, but in no case higher than the rates contemporaneously maintained to Bisbee, and we see no reason why, with respect to rates applying via California junctions, this adjustment should not be made.

Many of the commodity rates from the northwest to El Paso and transcontinental territory, however, apply only via Utah and Colorado junctions, and rates so limited do not apply to points west of El

Paso. Complainant contends that all of these rates should be made to apply by way of California junctions and the El Paso & Southwestern, so that Douglas may have the benefit of the El Paso basis. No sufficient reason is shown of record for requiring the establishment of these rates to Douglas via California junctions.

Complainant submitted evidence intended to show that the application from California to Douglas of class rates on certain commodities, higher than commodity rates contemporaneously in force on like traffic from similar points of origin to transcontinental destinations east of Douglas produces violations of the long-and-short-haul clause of the fourth section of the act. Attention is also directed to the fact that the mixtures on certain traffic moving under commodity rates from California points to Douglas in mixed carloads, are restricted as compared with the mixtures permitted on similar traffic moving to points in transcontinental territory east of Douglas. These transcontinental commodity rates are published subject to rule 77 of Tariff Circular 18-A, which is a substantial compliance with the requirements of the fourth section. Du Pont de Nemours & Co. v. Director General, 55 I. C. C. 247. [191]

Complainant compares the rates assailed with rates from Chicago, Kansas City, Denver, and other points to El Paso, from Pacific coast points to Utah common points, and between other points, for the purpose of showing the unreasonableness of the rates to Douglas. These comparisons, however, have little

probative value, as they apply on traffic which in most instances is highly competitive and subject to influences not present in the movement from the Pacific coast to Douglas.

Complainant urges that the minimum weights applicable on certain commodities from California points to Douglas are unreasonable and unduly prejudicial because they are higher than those which apply on the same commodities between California and Denver, between California and Utah common points, and from Chicago, Denver, New Orleans, and other points to El Paso. The minimum weights under attack are also applicable from California to El Paso, Bisbee, and Southern Pacific cross-country points which are in competition with Douglas. No evidence was submitted as to the actual loading or other pertinent factors affecting the minima assailed or those compared; and no showing is made that Douglas is affected adversely by the difference in minimum weights.

The Santa Fe meets the Southern Pacific rates from California to Douglas via its circuitous route through Deming. Complainant contends that through routes should be established from points on the Santa Fe in California to Douglas, either via Santa Fe to Colton, Southern Pacific and El Paso & Southwestern beyond, or via Santa Fe to Phoenix, Arizona Eastern, Southern Pacific, and El Paso & Southwestern beyond. The principal reason advanced to support this request is that the time consumed in the movement via the Deming route is excessive. Complainant submitted a number of

California originating points as representative, all of which have through routes and joint rates in connection with the Southern Pacific. Complainant was unable to name any California points from which joint rates do not apply to Douglas via the Southern Pacific over direct routes. The evidence on this point is meager and indefinite, and fails to support the contention that the through routes from California points to Douglas are not reasonably adequate.

No evidence was submitted to support the allegation under section 2 of the act.

It is clear that there is a closer geographical and economic relationship between Douglas, Bisbee, and cross-country points on the Southern Pacific than is reflected in some of the class and commodity rates from California, and in certain of the commodity rates from the northwest to those points, and that defendants' present rate ad- [192] justment to this extent unduly prejudices Douglas and unduly prefers Bisbee and certain Southern Pacific points. No sufficient evidence has been presented that the rates attacked are unreasonable, or that they are unduly prejudicial by reason of the fact that they are not lower than the corresponding rates to El Paso. This finding is confined to the strict issue before us and to the evidence of record and is not to be understood as direct or indirect approval of the adjustment under which certain commodity rates eastbound are blanketed from Arizona points all the way to the Atlantic seaboard.

Upon the record we find that the rates assailed are not unreasonable or unjustly discriminatory, but that the class rates from points on lines of defendants in California to Douglas are, and for the future will be, unduly prejudicial to the extent that they exceed or may exceed the class rates contemporaneously maintained from the same points of origin to Bisbee, Ariz., and to Lordsburg, N. Mex., and points on the Southern Pacific taking the same rates as Lordsburg; that the commodity rates, except on fresh fruits and vegetables, from said points in California to Douglas are, and for the future will be, unduly prejudicial to the extent that they exceed or may exceed the rates contemporaneously maintained on like commodities from the same points of origin to Bisbee, Ariz., and to Lordsburg, N. Mex., and points on the Southern Pacific taking the same rates as Lordsburg; that commodity rates, except on fresh fruits and vegetables, from points on lines of defendants in Oregon and Washington and points basing thereon, to Douglas, applicable via California junctions, are, and for the future will be, unduly prejudicial, to the extent that they exceed or may exceed the rates contemporaneously maintained on like commodities from the same points of origin to El Paso, Tex., and to Bisbee, Ariz. The foregoing finding should not be construed as covering rates from British Columbia, as no evidence is before us respecting the rates covering that portion of the haul within the United States.

An order will be entered in accordance with these findings. [193]

ORDER.

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 4, held at its office in Washington, D. C., on the 3d day of November, A. D. 1921.

No. 11442.

Traffic Bureau of the Douglas, Ariz., Chamber of Commerce and Mines,

v.

The Atchison, Topeka & Santa Fe Railway Company; Camas Prairie Railroad Company; Chicago, Milwaukee & St. Paul Railway Company; El Paso & Southwestern Company; El Paso & Southwestern Railroad Company of Texas; The Galveston, Harrisburg & San Antonio Railway Company; The Great Northern Railway Company; Los Angeles & Salt Lake Railroad Company; Northern Pacific Railway Company; Northwestern Pacific Railroad Company; Oregon Short Line Railroad Company; Oregon Trunk Railway Company; Oregon-Washington Railroad & Navigation Company; Pacific Coast Railroad Company; Rio Grande, El Paso & Santa Fe Railroad Company; Southern Pacific Company; Southern Pacific Company—Atlantic Steamship Lines; Spokane, Portland & Seattle Railway Company; Sunset Railway Company; Tidewater Southern Railway Company; Virginia & Truckee Railway; The Western Pacific Railroad Company; Bay Point & Clayton Rail-

road Company; British Columbia Electric Railway Company, Limited; California Central Railroad Company; California Western Railroad & Navigation Company; Canadian National Railways; The Canadian Pacific Railway Company; Cement, Tolenas & Tidewater Railway; Chelsea Tug & Barge Company; Clatskanie Transportation Company; Coeur d'Alene & Pend d'Oreille Railway Company; Coeur d'Alene & St. Joe Transportation Company; Crows Nest Southern Railway Company; Diamond "O" Navigation Company; Frank Waterhouse & Company; Haekins Transportation Company; Hartford Eastern Railway Company; Inland Empire Railroad Company; Island Belt Steamship Company; J. Kellog Transportation Company; James & Marmont; McCloud River Railroad Company; Nelson & Fort Sheppard Railway Company; Pacific Electric Railway Company; Pacific Northwest Traction Company; Pacific Steamship Company; Portland Railway, Light & Power Company; Puget Sound Navigation Company; Sacramento Northern Railroad; San Diego & Arizona Railway Company; San Francisco-Sacramento Railroad Company; Santa Maria Valley Railroad Company; Sierra Railway Company of California; Skagit River Navigation & Trading Company; Skinner Car Ferry Company; Spokane & Eastern Railway & Power Company; Spokane International Railway Company; Tijuana & Tecati Railway Company; Trona Railway Company; Vancouver-Victoria & Eastern

Railway & Navigation Company; Visalia Electric Railroad Company; Walla Walla Valley Railway [194] Company; Washington, Idaho & Montana Railway Company; Western Transportation Company; Yakima Valley Transportation Company; and Yosemite Valley Railroad Company.

This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and said Division having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That the above-named defendants, according as they participate in the transportation, be, and they are hereby, notified and required to cease and desist, on or before February 21, 1922, and thereafter to abstain, from publishing, demanding, or collecting class rates, and commodity rates, except on fresh fruits and vegetables, from points on the lines of the defendants in California, and commodity rates, except on fresh fruits and vegetables, from points on the lines of the defendants in Oregon and Washington and points basing thereon, to Douglas, Ariz., which shall exceed the class and commodity rates prescribed in the next succeeding paragraphs.

It is further ordered, That said defendants, according as they participate in the transportation, be, and they are hereby, notified and required to establish, on or before February 21, 1922, upon no-

tice to this Commission and to the general public by not less than 30 days' filing and posting in the manner prescribed in section 6 of the interstate commerce act, and thereafter to maintain and apply class rates, and commodity rates, except on fresh fruits and vegetables, from points on the lines of the defendants in California to Douglas, Ariz., which shall not exceed the class rates and corresponding commodity rates contemporaneously in effect from the same points of origin to Bisbee, Ariz., Lordsburg, N. Mex., and points on the Southern Pacific taking the same rates as Lordsburg.

It is further ordered, That said defendants, according as they participate in the transportation, be, and they are hereby notified and required to establish, on or before February 21, 1922, upon notice to this Commission and to the general public by not less than 30 days' filing and posting in the manner prescribed in section 6 of the interstate commerce act, and thereafter to maintain and apply commodity rates, except on fresh fruits and vegetables, from points on the lines of said defendants in Oregon and Washington, and points basing thereon, to Douglas, Ariz., via California junctions, which shall not exceed corresponding commodity rates contemporaneously in effect from the same points of origin and [195] applicable via said California junctions to El Paso, Tex., and Bisbee, Ariz.

And it is further ordered, That this order shall continue in force until the further order of the Commission.

By the Commission, Division 4.

[Seal] GEORGE B. McGINTY,
Secretary. [196]

Thereupon there was offered in evidence by defendants, and received as Exhibit "D", a true and correct copy of the report and order of said Commission in Docket 13139, Graham etc. Traffic Assn. v. A. E. R. Co., et al., 81 I. C. C. 134, in words and figures, as follows: [211]

EXHIBIT "D"

No. 13139.

GRAHAM & GILA COUNTIES TRAFFIC ASSOCIATION v. ARIZONA EASTERN RAILROAD COMPANY ET AL.

Submitted January 24, 1923. Decided June 27, 1923

Class and commodity rates to points on the Globe division of the Arizona Eastern Railroad from interstate points east and west thereof found not unreasonable but found unduly prejudicial. Undue prejudice ordered removed.

Lloyd F. Jones and F. A. Jones for complainant.

Fred H. Wood, James R. Bell, C. W. Durbrow, Elmer Westlake, J. E. Lyons, George P. Bullard, and Henley C. Booth for defendants.

D. R. Johnson for Arizona Corporation Commission; and O. T. Helpling for Riverside Portland Cement Company, interveners.

REPORT OF THE COMMISSION.

Division 2, Commissioners Daniels, Esch, and Campbell.

Esch, Commissioner:

A report was proposed by the examiner, to which

exceptions were filed by defendants, and oral argument thereon was heard by us.

In Graham & Gila County Traffic Asso. v. A. E. R. R. Co., 40 I. C. C., 573, submitted November 6, 1914, and decided July 7, 1916, the complainant attacked, as unreasonable, unjustly discriminatory, unduly prejudicial, and in violation of the aggregate-of-intermediates clause of the fourth section, commodity rates from points in California and class and commodity rates from eastern transcontinental groups to points in Arizona on the Globe division of the Arizona Eastern Railroad. We declined to consider the allegations of unjust discrimination and undue prejudice because of lack of particularity in the complaint. We further held that the rates in effect were not unreasonable and that the alleged violation of section 4 was without basis, because there was in effect a rule that where the aggregate of the intermediate rates made less than the joint through rate the former should be applied as the lawful rate. The same rule has since been and is now in effect.

The complaint in the instant case, brought by the same complainant, renews the charges made in the former case, also brings in issue the class rates from California and the class and commodity [198] rates from points in Oregon and Washington, and alleges undue preference of El Paso, Tex., Phoenix, Mesa, Florence, Superior, and Flagstaff, Ariz., and other destinations taking relatively lower rates than points on the Globe division. Under the last allegation complainant introduced evidence tending to

show undue preference of Ajo, Sasco, and Nogales, Ariz., and Cananea, Mexico, without objection by defendants, who also introduced evidence intended to disprove any undue preference of those points. Upon oral argument defendants objected to any finding of undue preference of the last-named points as beyond the issues. They do not claim to have been put at any disadvantage by the failure to specifically name these points in the complaint, and the objection is not sustained. The Arizona Corporation Commission intervened in support of the complaint, and the Riverside Portland Cement Company with respect to the rates on cement from California. The alleged violations of sections 2 and 4 of the act are not supported by the evidence and need not be considered further.

The report in the former case sets forth a complete description of the general bases of rates to points on the Globe division as compared with rates to numerous alleged favored points, the relative distances, the industrial, agricultural, traffic, and transportation conditions, and other pertinent matters. The present report, therefore will deal mainly with changes brought about since the decision in the prior case, amplification of certain matters discussed in the former report, in the light of the present comprehensive record, and with the new issue of undue prejudice and preference.

From 1910 to 1920 the population of Arizona increased from 204,354 to 333,273, from 1.86 to 2.91 per square mile, and from 102.46 to 140.17 per mile of railroad. The principal industries of the State

are copper mining and the raising of live stock. Prior to 1920 cotton was also produced extensively and normally is one of the principal products of the State. Other farm or ranch products produced in considerable quantity are alfalfa, wheat, oats, barley, fruit, and dairy products. There are only a few manufactured products. All of the stations on the Arizona Eastern are in Arizona.

At the present time there are about 30,000 acres of irrigated and cultivated land along the Globe division in the Gila Valley. There has been no considerable increase in the irrigated area in this district since 1914. On the other hand, since 1914, the irrigated area in the Salt River Valley, of which Phoenix is the center, has increased from approximately 188,000 acres to 267,400 acres. There is much divergence between the parties as to the nature and relative quantity of traffic handled by the Globe and Phoenix divisions of the Arizona Eastern. The following table compares the tonnage [199] interchanged with the Southern Pacific at Maricopa and Bowie, its junctions with the Phoenix and Globe divisions, respectively, during the four years preceding 1922:

	1918		1919		1920		1921	
	Globe division	Phoenix division	Globe division	Phoenix division	Globe division	Phoenix division	Globe division[1]	Phoenix division
To Southern Pacific.								
Ore and bullion	182,815	183,497	87,236	44,562	85,307	38,151	29,018	7,557
Live stock	7,950	12,802	2,600	11,524	6,079	9,629	5,653	7,123
Agricultural products	17,155	77,414	24,614	93,967	34,095	33,652	22,440	47,431
All other	15,523	32,471	38,019	37,240	2,376	28,252	8,063	20,132
Total	223,443	306,184	152,469	187,293	127,857	109,684	65,174	82,243
From Southern Pacific.								
Oil	202,663	158,903	169,320	97,439	175,727	92,546	58,352	55,888
Forest products	49,842	59,374	30,314	43,925	58,012	52,389	11,405	15,633
Iron and steel	10,048	5,045	5,642	4,678	14,396	8,214	1,858	5,515
Machinery	1,860	4,400	1,369	1,718	2,283	3,087	1,720	565
Coal and Coke	38,628	1,331	26,208	718	38,835	499	11,904	268
Ore and bullion	43,696	11,252	22,693	18,005	14,098	23,298	3,142	2,523
All other	43,355	78,520	58,634	79,504	47,869	119,906	33,294	112,143
Total	390,092	318,825	309,180	245,987	351,220	299,939	121,675	192,535
Ttl. tonnage handled	613,535,	625,009	461,649	433,280	479,077	409,623	186,849	274,778

[1] Figures for January 1 to November 30 only.

The sharp decline in agricultural products delivered to the Southern Pacific at Maricopa in 1920 was due to the depression in the cotton industry that year, the cotton crop prior to that time having comprised a large proportion of the agricultural tonnage from the Salt River Valley.

While it still appears, as stated in the former report, that the Globe division "is dependent chiefly upon products of the mines for its revenue," it is evident that the Phoenix division is also dependent upon mines for a large part of its tonnage. Moreover, while the tonnage of agricultural products and live stock moving over the Globe division is not as large as that over the Phoenix division, nevertheless it is considerable and affords a permanent source of revenue. The foregoing table shows also that the total tonnage hauled does not vary greatly as between the two divisions. The total traffic handled over either division has not shown a steady increase since 1913 but has fluctuated widely from year to year, in which respect it has followed the general trend of traffic on the Southern Pacific in Arizona.

The evidence presented herein confirms what was said in the former report relative to the difficult transportation conditions prevailing on the Globe division. The maximum grade on that division is 3.5 per cent, from Miami to Live Oak, 2.5 miles. Other grades [200] are, from Globe to Pinal, 2.28 miles, 2.3 per cent; from Cutter to Pinal, in the opposite direction, 5.6 miles, 2.2 per cent; and from San Carlos to Bowie, 92.5 miles, a maximum of 1

per cent. The maximum grade on the Phoenix division between Maricopa and Phoenix is 0.49 per cent, from Sacate to Maricopa, 8 miles; on the Buckeye branch of the Phoenix division between Phoenix and Hassayampa, 0.5 per cent for about 16 miles; and on the Phoenix & Eastern Railroad under lease by the Arizona Eastern, between Phoenix and Winkelman, except for about 500 feet through a tunnel, 0.52 per cent. Maximum grades on the main line of the Southern Pacific are, between Aurant, Calif., and Yuma, Ariz., 2 per cent; between Yuma and Tucson, Ariz., 1 per cent; and between Tucson and Rio Grande, N. Mex.-Tex., 1.4 per cent.

From 1913 to 1920, inclusive, the net railway operating income of the Arizona Eastern, including the Phoenix & Eastern, yielded from 1.374 to 8.699 per cent on its book value. In the first 11 months of 1921 it sustained an operating deficit of $65,513.58. The operating ratio for the period from 1913 to November 30, 1921, ranged from 50.01 to 88. On June 30, 1915, the Arizona Eastern and the Phoenix & Eastern combined had a book value of $19,227,648.08, while their tentative valuation as of the same date has been fixed by us at $13,392,214.

From 1913 to 1920, inclusive, the return on the book value of the Southern Pacific ranged from 3.22 to 5.37 per cent, and the operating ratio from 58.87 to 80.63. Pertinent statistics of rail-line operations of the Arizona Eastern, Southern Pacific, and other lines are compared below.

	Freight revenue per mile of road		Revenue ton-miles per mile of road		Operating ratio	
	1919	1920	1919	1920	1919	1920
Arizona Eastern	$7,566.18	$8,128.82	323,259	331,312	77.40	81.11
Southern Pacific:						
Arizona intrastate	24,030.16	24,812.35	2,229,502	1,926,483	70.31	66.09
System	15,926.39	17,678.01	1,217,959	1,249,139	76.22	80.57
Atchison, Topeka & Santa Fe:						
Arizona intrastate	15,081.33	17,185.42	1,247,126	1,324,167	70.11	83.07
System	14,358.80	16,235.97	1,147,410	1,186,479	72.54	82.82
El Paso & Southwestern:						
Arizona Intrastate	7,910.52	7,759.55	576,887	521,887	76.41	82.91
System	9,712.52	10,908.39	770,855	854,294	69.64	72.66
Chicago, Rock Island & Pacific	9,678.99	11,708.31	884,991	988,670	86.95	94.63

The annual rental paid by the Arizona Eastern to the Phoenix & Eastern for the use of the 91.86 miles of track of the latter between Phoenix and Winkelman in 1910 was $35,550.55, and has been increased in each successive year, except one, to and including 1920, when the amount paid was $230,-133.78. [201]

The rates hereinafter mentioned are those in effect at the time of the hearing, January 18, 1922, stated in cents per 100 pounds. Class rates from California points to points on the Globe division are made by combination on Bowie. To Ajo, terminus of the Tucson, Cornelia & Gila Bend Railroad, an independent line extending 44 miles from Gila Bend, Ariz., junction point with the Southern Pacific, joint through class rates are in effect, and

the difference between the rates to Gila Bend and to Ajo is only about 25 per cent of the local rates from and to the same points. To Nogales, on a branch line of the Southern Pacific, 66 miles from Tucson, junction point with the main line, rates on the first three classes are constructed by the use of arbitraries over the junction-point rates, which are materially lower than the local rates from Tucson to Nogales. Rates on other classes are constructed on the full combination. The main-line rates on all classes are extended to Mesa, on the Phoenix & Eastern Railroad, or so-called Hayden branch of the Arizona Eastern, 34 miles from Maricopa.

The situation as to commodity rates from California to points on the Globe division, as compared with rates to El Paso, Phoenix, and Nogales, is adequately set forth at pages 575-576 of the former report. Substantially the same relative situation exists to-day. It is sufficient here to call attention to the fact that the junction-point rates are generally extended to Ajo, Mesa, and Nogales, and on some commodities to Florence, which is 36 miles east of Mesa on the same line. On some commodities the rates are blanketed, not only to all main-line and many branch-line and independent-line points in Arizona, but also to eastern transcontinental Groups J to A, inclusive, so that the rates from California to points on the Atlantic seaboard are lower than to Globe division points in Arizona. For instance, the rate on dried fruits from Los Angeles, Calif., to Ajo, Mesa, Phoenix, and Nogales, to main-line points in Arizona, to El Paso, and to trans-

continental Groups J to A is $1.25, while to Safford, on the Globe division, it is $1.62, to Globe $1.94, and to Miami $1.97. On some commodities, comprising generally those used in the mining industry, the main-line rates or rates considerably lower than the combinations on Bowie have been extended to Globe division points.

On the other hand, defendants show that class and commodity rates from San Francisco, Calif., and Los Angeles to East Ely, Nev., on the Nevada Northern Railway, 140 miles from Cobre, Nev. junction point with the main line of the Southern Pacific from Ogden, Utah, to San Francisco, and to Tonopah, Nev., on the Tonopah & Goldfield Railroad, 71 miles from Hazen, Nev., junction point [202] with the same line of the Southern Pacific, are substantially higher than the junction-point rates. Comparisons between commodity rates from California to East Ely and Globe are discussed at page 578 of the former report. Both the Nevada Northern and the Tonopah & Goldfield are independent lines controlled by mining companies. Their traffic is largely derived from the mines which they serve, and that of the former is relatively light as compared with the Arizona Eastern.

Very little evidence was introduced regarding the rates from points in Oregon and Washington, but it appears that the situation there is similar to that with respect to the rates from California, at least on some commodities.

The situation as to class and commodity rates from eastern transcontinental groups to points on

the Globe division, as compared with those to mainline and branch-line points in Arizona, with rates to branch line points in California, and class rates to Winnemucca, Nev., is fully described in the former report at pages 580 to 586. Evidence presented by complainant in the instant case confirms much of what is there said and need not be reviewed in detail. It will suffice to direct attention to additional matters disclosed by the present record. The spread between the rates to points on the Globe division and other points indicated has, of course, been increased by the percentage increases made on June 25, 1918, and August 26, 1920.

The joint through rates to Globe division points are constructed by adding arbitraries to the joint through rates to Bowie, except on some commodities used in the mining industry. Until June 20, 1921, these arbitraries were generally the same as the local rates from Bowie. On that date a substantial increase was made in the local rates, but the arbitraries were not increased. By schedules filed to become effective May 15, 1922, defendants proposed to increase the arbitraries to a parity with the local rates, but upon protest by the complainant herein, the proposed increased rates were suspended in Investigation and Suspension Docket No. 1555. Subsequently defendants were permitted to cancel the suspended schedules, and the proceeding was discontinued.

Joint through commodity rates apply from eastern groups to Ajo and Sasco, which are generally only slightly higher than the mainline rates of the

Southern Pacific. Sasco is on the Arizona Southern Railroad, an independent short line, extending from Red Rock, Ariz., junction with the main line of the Southern Pacific to Silver Bell, Ariz., 21 miles. Sasco is about 8 miles from Red Rock. From the East commodity rates are generally maintained to Cananea, on the Southern Pacific of Mexico, 20 miles from Naco, Ariz., where that line connects with the El Paso & Southwestern, on a parity with [203] Bowie and other main-line points of the Southern Pacific in Arizona. The distance from Kansas City, Mo., to Cananea is 1,211 miles, as compared with 1,147 miles to Bowie and 1,271 miles to Globe.

The position taken by complainant is that where the rates are graded to points on the main line east and west of Bowie they should be similarly graded for like distances from Bowie to Globe division points, and where blanketed the junction-point rates should be extended to Globe division points not more distant from Bowie than the extent of the blanket from Bowie.

A number of witnesses engaged in business at various points on the Globe division testified as to the severe competition experienced from merchants and jobbers at points on the Phoenix division and on the Atchison, Topeka & Santa Fe, herein called the Santa Fe, who, by reason of their more advantageous freight rates, were able to haul their goods across country by truck and enter the markets at Globe division points. For the same reason such merchants and jobbers have been able to do

business at country points not served by rail lines, which are much nearer to the Globe division.

The effect of water competition upon the rates to Nogales and El Paso is referred to at page 584 of the report in the former case. It does not appear from the present record that any traffic has moved by water into Guaymas, Mexico, and from that point to Nogales for several years.

Defendants show that class rates from Kansas City, St. Louis, Mo., and Chicago, Ill., to East Ely and Tonopah are made by combination on the junction points; that rates from the same origin points to Clifton, Ariz., on a branch of the El Paso & Southwestern, formerly the Arizona & New Mexico Railroad, are generally only slightly less than the full combination on the junction point; and that rates to Paragon, Idaho, on a branch line of the Oregon-Washington Railroad & Navigation Company, 33 miles from Enaville, Idaho, junction point with the main line, are substantially higher than the junction-point rates. Complainant directs attention to numerous branch-line points in Idaho to which the main-line rates are applied. It is conceded that from the East the main-line rates are usually extended to branch-line points in California but defendants maintain that this is a situation that has been brought about through competitive influences beyond their control.

The rates to Cananea, Sasco, and Ajo were established and have been maintained by agreement or understanding between the Southern Pacific and the mining companies operating at those points. It

is said that the rates to Cananea have been held down by potential water competition through the port of Guaymas, and that it has been necessary to accord a favorable basis of rates to that point [204] because the mines located there have experienced great difficulty in keeping in operation. Practically all of the traffic moving to and from Cananea is incident to the mining industry at that point.

The agreement relative to the rates to and from Ajo was entered into prior to the construction of the Tucson, Cornelia & Gila Bend in 1915, and was made in view of the contemplated construction of that line by other routes which would have drawn the traffic away from the Southern Pacific. The relatively low rates accorded that point comprise not only rates on commodities essential to the mining industry but also on practically all class and commodity traffic. Defendants state that the rates to Sasco will probably be canceled, due to the dismantling of the plant at that point.

By understanding with the companies operating mines on the Globe division, joint through rates on mining supplies and products of the mines were originally established and have been maintained to points on that line. Defendants reiterate the explanation contained in the former report of their rate policy on the Globe division, viz:

> * * * that low rates on mining supplies and mining products are necessary to enable the mines at Globe and Miami to compete with other mines. To put it in another way, the

carriers contend that low rates on mining supplies and mining products are essential to the life of the mining community, but that such is not the case with respect to rates on the various other commodities included in the complaint.

At the hearing defendants stated that material reductions were being published, effective not later than April 15, 1922, in the rates on mining supplies from eastern transcontinental groups, which would establish generally a parity of rates thereon as between Globe division points, on the one hand, and Cananea, Ajo, Hayden, Clifton, and other branch-line and independent-line points in Arizona on the other hand. Among the principal articles embraced in this readjustment were cast-iron pipe, iron and steel articles of various kinds, mixing machinery, grinding balls, bolts, nuts, washers, spikes, boiler flues, boiler ends, boiler heads and cables. On forest products from California and Oregon to Arizona, and on petroleum oil from California, one-half of the general increase made on August 26, 1920, was to be removed and a similar parity established as between the points named. The rates on fuel oil from the midcontinent field were also to be reduced. The reductions on mining supplies and on coal and coke are experimental and of a temporary character. The entire increase of August 26, 1920, on coal and coke was removed on March 25, 1922. A reduction of 10 per cent has also been made in the rates on agricultural products.

Defendants, without admitting that the rates assailed are unreasonable or unduly prejudicial, stated

that, if we should find that [205] other rates must be reduced, the maximum reduction that should be required would be to establish joint through class and commodity rates to Globe division points from points east and west, based on the rates to Bowie and a reduction of one-third from the present local rates from Bowie. Complainant contends that such a readjustment would be inadequate and fail to remove the underlying causes of the complaint; that nothing has been shown in this proceeding to justify the charging of 66 2/3 per cent of the local rates to Globe division points and applying the junction-point rates, or rates only slightly higher, to numerous other points similarly situated.

The record in this proceeding shows that transportation conditions are without doubt somewhat more difficult over the Globe division than over the Phoenix division, but it can not be said that that difference is so pronounced as to warrant in itself a continuance of the existing inequalities as between the rates to points on those lines. Except as to Phoenix, defendants have failed to establish any such dissimilarity of conditions or other convincing reasons as to justify the present rate relation. Even as to Phoenix it should be remembered that the Southern Pacific does not in all instances have to meet the rates of the Santa Fe, but, on the contrary, the Santa Fe has to meet the rates of the Southern Pacific from many points of origin, because the latter is the direct and rate-making line.

The situation here presented is in all substantial respects similar to that considered by us in the recent case of State of Idaho ex rel. v. Director Gen-

eral, 66 I. C. C., 330. We there found that the maintenance of blanket commodity rates from and to Nampa, Idaho, main-line junction point on the Oregon Short line, and to Emmett and Boise, Idaho, on the Emmett and Boise branches, respectively, of the same carrier, lower than the rates contemporaneously maintained on like traffic from and to points on the Murphy and Wilder branches, was unduly prejudicial to the latter and unduly preferential of the former to the extent of the difference in such rates. A similar finding was made as to rates that were graded to points on those branches to the extent that the branch-line differentials on the Murphy and Wilder branches exceeded those maintained from and to points on the Emmett and Boise branches for like distances from the main-line junction.

The Southern Pacific owns practically all of the stock of the Arizona Eastern and, although the latter is separately operated, for rate-making purposes it may be considered as a branch line of the Southern Pacific. Smith v. I. C. R. R. Co., 68 I. C. C., 427; Arizona Corporation Commission v. A. E. R. R. Co., supra.

Defendants urge that no competitive relation has been made to appear as between the points considered herein. The record estab- [206] lishes a very definite competition existing as between certain of the points. In this connection attention may be directed to the decision in Intermediate Rate Asso. v. Director General, 61 I. C. C., 226, wherein the same contention was made. In that case we said:

> However, thriving communities, all in the same general section of the country, striving for population, industry, and business growth, may not need elaborate evidence to show that they are entitled to relief if the rates are not properly related.

The fact that rates to certain points are maintained under contract between the carriers and shippers does not affect our authority to require the carriers to desist from violations of the interstate commerce act. Ohio Rates, Fares, and Charges, 64 I. C. C., 493, Cape Girardeau Commercial Club v. I. C. R. R. Co., 51 I. C. C., 105. As in State of Idaho ex rel. v. Director General, supra, the record in the instant case does not support a finding of unreasonableness.

We find that the maintenance of class and commodity rates on interstate traffic from points in California, Oregon, and Washington and from eastern transcontinental groups to Ajo, Mesa, Florence, Sasco, and Nogales, Ariz., and other points on the Arizona Eastern and on branch lines of the Southern Pacific in Arizona, except competitive points located on lines of different carriers, and to Cananea, Mexico, in so far as the transportation takes place within the United States, not higher than the rates to the junction points with the main line of the Southern Pacific, and the refusal to maintain rates on a similar basis to Amster, Solomon, Safford, Thatcher, Pima, Fort Thomas, Globe, and Miami, Ariz., on the Globe division of the Arizona Eastern, is unduly prejudicial to the latter

points and unduly preferential of the former points to the extent that the rates to the Globe division points exceed the rates to the junction point.

We further find that the maintenance of class and commodity rates on interstate traffic, the rates on which are on a graded or mileage basis, from the points of origin described in the last paragraph to the said points on the Globe division higher for like distances than are contemporaneously maintained to Ajo, Mesa, Florence, Sasco, and Nogales, Ariz., and other points on the Arizona Eastern and on branch lines of the Southern Pacific in Arizona, and to Cananea, Mexico, in so far as the transportation takes place within the United States, is unduly prejudicial to the former points and unduly preferential of the latter points to the extent that the rates to the Globe division points exceed those contemporaneously maintained on like traffic to the other destination points described for like distances from the main-line junction. [207]

In the case of rates constructed according to the latter method, joint through rates should be established to all the branch-line and independent-line points involved based on the rates to the main-line junction point and a uniform percentage of the local rates beyond.

The Tucson, Cornelia & Gila Bend and the Arizona Southern are not parties defendant, and no order can, therefore, be issued against them, but it appears that the Southern Pacific controls the rates to Ajo and Sasco and that it can remove the undue prejudice and preference as to those points.

An appropriate order will be entered. [208]

ORDER.

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 2, held at its office in Washington, D. C., on the 27th day of June, A. D. 1923.

No. 13139.

Graham & Gila Counties Traffic Association

v.

Arizona Eastern Railroad Company; The Atchison, Topeka & Santa Fe Railway Company; The Baltimore & Ohio Railroad Company; Boston & Albany Railroad Company and The New York Central Railroad Company, Lessee; The Chicago, Rock Island & Pacific Railway Company; The Chicago, Rock Island & Gulf Railway Company; The Colorado & Southern Railway Company; El Paso & Northeastern Railroad Company; El Paso & Southwestern Railroad Company; El Paso & Southwestern Company; El Paso & Southwestern Railroad Company of Texas; The Fort Worth & Denver City Railway Company; The Galveston, Harrisburg & San Antonio Railway Company; Louisville & Nashville Railroad Company; Morgan's Louisiana & Texas Railroad & Steamship Company; The New York Central Railroad Company; The Pennsylvania Railroad Company; Southern Pacific Company; Texas & New Orleans Railroad Company; and The Texas & Pacific Railway Company and J. L. Lancaster and Charles L. Wallace, Receivers.

This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and said division having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof; and said division having found in said report that the maintenance of class and commodity rates on interstate traffic from points in California, Oregon, and Washington and from eastern transcontinental groups to Ajo, Mesa, Florence, Sasco, and Nogales, Ariz., and other points on the Arizona Eastern and on branch lines of the Southern Pacific in Arizona, except competitive points located on lines of different carriers, and to Cananea, Mexico, in so far as the transportation takes place within the United States, not higher than the rates to the junction points with the main line of the Southern Pacific, and the refusal to maintain rates on a similar basis to Amster, Solomon, Thatcher, Pima, Fort Thomas, Globe, and Miami, Ariz., on the Globe division of the Arizona Eastern, is unduly prejudicial to the latter points and [209] unduly preferential of the former points to the extent that the rates to the Globe division points exceed the rates to the junction point; and that the maintenance of class and commodity rates on interstate traffic, the rates on which are on a graded basis, from the said origin points and groups to the said points on the Globe division higher for like distances than are contemporaneously maintained to Ajo, Mesa, Florence, Sasco, and Nogales, and other points on the Arizona Eastern

and on branch lines of the Southern Pacific in Arizona, and to Cananea, in so far as the transportation takes place within the United States, is unduly prejudicial to the former points and unduly preferential of the latter points to the extent that the rates to the Globe division points exceed those contemporaneously maintained on like traffic to the other destination points described for like distances from the main-line junction:

It is ordered, That the above-named defendants, according as they participate in the transportation, be, and they are hereby, notified and required to cease and desist, on or before October 11, 1923, and thereafter to abstain, from practicing such undue prejudice and preference.

It is further ordered, That said defendants, according as they participate in the transportation, be, and they are hereby, notified and required to establish, on or before October 11, 1923, upon notice to this commission and to the general public by not less than 30 days' filing and posting in the manner prescribed in section 6 of the interstate commerce act, and thereafter to maintain and apply rates which will prevent and avoid the aforesaid undue prejudice and preference.

And it is further ordered, That this order shall continue in force until the further order of the commission.

By the commission, division 2.

[Seal] GEORGE B. McGINTY,
Secretary. [210]

Thereupon, defendants offered further testimony as follows:

TESTIMONY OF J. L. FIELDING:

Direct Examination:

(The qualifications of Mr. Fielding were admitted by counsel for plaintiffs.)

"I am Assistant General Freight Agent of Southern Pacific Company, and have been in its employ for about twelve years. For two years I was at Tucson, Arizona, as Chief Rate Clerk, in the Freight Traffic Department. I was Assistant General Freight Agent at El Paso for two years, following 1924, and have been Assistant General Freight Agent at San Francisco since 1926. For the past six years my work has been exclusively the preparation of exhibits and testimony for introduction in cases before courts and commissions; and prior to 1926 I was engaged in similar work for a substantial part of my time. I have, in my possession or available to me at my office, tariffs which show the rates on sugar, in carloads from California points to destinations in Arizona, including Tucson, heretofore and now in effect. These tariffs are printed counterparts of tariffs lawfully on file with the Interstate Commerce Commission. I have prepared certain statements for presentation in these cases, from those tariffs, and have checked those statements against the sources of information shown thereon, and have determined that they are true and correct to the best of my knowledge and belief."

(Testimony of J. L. Fielding.)

Thereupon, there was offered in evidence, through said Witness Fielding, the statements referred to by the witness; which statements were marked, identified and received as Defendants' Exhibits "E" and "F", and are in words and figures as follows: [212]

#L-738-Phx
#L-844-Phx

Defendants' Exhibit No. E

STATEMENT SHOWING COMPLETE CHRONOLOGICAL HISTORY OF CARLOAD RATES ON SUGAR FROM NORTHERN CALIFORNIA SHIPPING POINTS VIZ: CROCKETT AND SAN FRANCISCO, CALIF., TO TUCSON, ARIZONA, DURING THE PERIOD APRIL 15th, 1914 TO AND INCLUDING JUNE 11th, 1928.

UNITED STATES DISTRICT COURT (ARIZONA)
Case No.
Exhibit No.
Sheet No.

LINE	EFFECTIVE DATE OF CHANGE IN RATES	Rate in cents per 100 lbs.	Minimum Weight (Lbs)	Rate in cents per 100 lbs.	Minimum Weight (lbs)	TARIFF REFERENCE ISSUED BY	TARIFF NUMBER	ICC NUMBER	REMARKS
1.	April 15, 1914	70	36000	-	-	Southern Pacific Co.	612-B	3632	
2.	November 15, 1914			55	60000	" " "	"	"	Voluntary reduction in rate.
3.	April 27, 1915	60	36000			" " "	"	"	Voluntary reduction in rate.
4.	May 25, 1915	60	36000	55	60000	" " "	"	"	No change involved - Rates approved as reasonable in ICC 6806 (34 ICC 158) decided May 25, 1915
5.	June 25, 1918	75	36000	69	60000	" " "	"	"	25% increase in rates under Director General's Order No.28
6.	November 25, 1919	82	36000	77	60000	" " "	612-C	4077	22¢ increase ~~No. 3203, superseding General Order No.28~~ 2/6
7.	February 29, 1920	-	-	77	60000	" " "	"	"	82¢ rate, 36000 lbs. cancelled No. 15797.
8.	August 26, 1920	-	-	96½	60000	" " "	"	"	25% increase in rates "Ex Parte 74" (58 ICC 220).
9.	July 27, 1921	-	-	96	60000	" " "	612-D	4172	Voluntary reduction in rate.
10.	July 1, 1922	-	-	86½	60000	" " "	"	"	10% voluntary reduction "Reduced Rates 1922"(68 ICC 676).
11.	January 11, 1924	-	-	84	60000	" " "	612-F	4442	Voluntary reduction in rate.
12.	October 27, 1925	-	-	75	60000	" " "	612-G	4499	Rate to Bowie, prescribed in ICC 14140 (101 ICC 667), applied also at Tucson, directly intermediate point.
13.	June 11, 1928	-	-	77	60000	F. W. Comph, Agent	26-H	885	Rate prescribed in ICC16742 (140 ICC 171).

STATEMENT SHOWING COMPLETE CHRONOLOGICAL HISTORY OF CARLOAD RATES ON SUGAR FROM SOUTHERN CALIFORNIA SHIPPING POINTS VIZ: BETTERAVIA, AND OXNARD, CALIFORNIA TO TUCSON, ARIZONA, DURING PERIOD APRIL 15th, 1914 TO AND INCLUDING JUNE 11th, 1928.

UNITED STATES DISTRICT COURT
(Arizona) Case No. L-738; L-844
EXHIBIT NO. E
SHEET NO. 2

LINE	EFFECTIVE DATE OF CHANGE IN RATES	Rate in: cents per 100 Lbs.	Minimum Weight Pounds	Rate in: cents per 100	MINIMUM WEIGHT POUNDS	TARIFF REFERENCE: ISSUED BY	TARIFF NUMBER	ICC NUMBER	REMARKS
1.	April 15, 1914	60	36000	-	-	Southern Pacific Co.	612-B	3632	Rate prescribed in ICC 5120 (29 ICC 103) decided January 6, 1914.
2.	November 15, 1914			55	60000	" " "	"	"	Voluntary reduction in rate.
3.	May 25, 1915	60	36000	55	60000	" " "	"	"	No change involved. Rates approved as reasonable in ICC 6806 (34 ICC 158) decided May 25, 1914.
4.	June 25, 1918	75	36000	69	60000	" " "	"	"	25% increase in rates under General Order No.28.
5.	November 25, 1919	82	36000	77	60000	" " "	612-C	4077	22½ increase ~~MCC 3208 superseding General Order~~ No. 28.
6.	February 29, 1920	-	-	77	60000	" " "	"	"	82½ rate, 36000 lbs. cancelled; FRA 15797
7.	August 26, 1920	-	-	96½	60000	" " "	"	"	25% increase "Ex Parte 74" (58 ICC 220).
8.	July 27, 1921	-	-	96	60000	" " "	612-D	4172	Voluntary reduction in rate.
9.	July 1, 1922	-	-	86½	60000	" " "	"	"	10% voluntary reduction "Reduced Rates 1922" (68 ICC 676).
10.	January 11, 1924	-	-	84	60000	" " "	612-F	4442	Voluntary reduction in rate.
11.	October 27, 1925	-	-	75	60000	" " "	612-G	4499	Rate to Bowie, prescribed in ICC 14140 (101 ICC 667), applied also at Tucson, directly intermediate
12.	June 11, 1928	-	-	65	60000	W. F. Gomph, Agent	26-N	885	Rate prescribed in ICC 16742 (140 ICC 171).

#L-738-Phx.
#L-844-Phx.
Defendant's Exhibit

UNITED STATES DISTRICT COURT (ARIZONA) No. F
Case No.
Exhibit No.
Sheet No. 1

STATEMENT SHOWING RATES ASSESSED ON CARLOAD SHIPMENTS OF SUGAR FROM NORTHERN CALIFORNIA POINTS VIZ: SAN FRANCISCO AND CROCKETT, CALIF., TO TUCSON, ARIZONA, AND EARNINGS THEREUNDER; RATES WHICH THE INTERSTATE COMMERCE COMMISSION DECLARED REASONABLE FOR REPARATION PURPOSES ON SAID SHIPMENTS AND EARNINGS THEREUNDER, COMPARED WITH RATES PRESCRIBED AND/OR APPROVED AS REASONABLE ON SUGAR BY THE INTERSTATE COMMERCE COMMISSION IN DECISIONS CITED, AND EARNINGS THEREUNDER.

LINE	FROM	TO	MILES	ROUTE	RATES ASSESSED: Rate in cents per 100 lbs.	RATES ASSESSED: Revenue Per Ton Mile (Mills)	RATES WHICH INTERSTATE COMMERCE COMMISSION DECLARED REASONABLE FOR REPARATION PURPOSES: Rate in cents per 100 lbs.	RATES WHICH INTERSTATE COMMERCE COMMISSION DECLARED REASONABLE FOR REPARATION PURPOSES: Revenue Per Ton Mile (Mills)
	Rate during period July 1, 1922 to January 10, 1924.							
1.	San Francisco, Cal.	Tucson, Ariz.	908 a:	A	86½	19.1	77	16.9
2.	Crockett, "	" "	889 a:	A	86½	19.6	77	17.3
3.	San Francisco, Cal.	Tucson, Ariz.	970 b:	B	86½	17.8	77	15.8
4.	Crockett, "	" "	955 b:	B	86½	18.1	77	16.1
	Rate during period January 11, 1924 to October 26, 1925.							
5.	San Francisco, Cal.	Tucson, Ariz.	908 a:	A	84	18.5	77	16.9
6.	Crockett, "	" "	889 a:	A	84	18.8	77	17.3
7.	San Francisco, Cal.	Tucson, Ariz.	970 b:	B	84	17.3	77	15.8
8.	Crockett, "	" "	955 b:	B	84	17.6	77	16.1
	- C O M P A R I S O N S -							
LINE	FROM	TO	MILES	ROUTE	Rate in cents per 100 lbs.	Revenue Per Ton Mile (Mills)	REMARKS	
9.	San Francisco, Cal.	Phoenix, Ariz.	787 a:	C	96½	24.5	Rate prescribed in ICC 11532 (62 ICC 412) decided	
10.	Crockett, "	" "	768 a:	C	96½	25.1	June 22, 1921	
11.	San Francisco, Cal.	Phoenix, Ariz.	919 b:	B	96½	21.0	do	
12.	Crockett, "	" "	904 b:	B	96½	21.3	do	
13.	San Francisco, Cal.	Globo, Ariz.	1145 a:	A	159 c	27.7	Rate in effect on January 18, 1922, approved as	
14.	Crockett, "	" "	1126 a:	A	159 c	28.2	reasonable in ICC 13139 (81 ICC 134) decided	
15.	San Francisco, Cal.	Globe, Ariz.	1207 b:	B	159 c	26.3	June 27, 1923.	
16.	Crockett, "	" "	1192 b:	B	159 c	26.6	do	
17.	San Francisco, Cal.	Safford, Ariz.	1061 a:	A	129 c	24.3	do	
18.	Crockett, "	" "	1042 a:	A	129 c	24.7	do	
19.	San Francisco, Cal.	Safford, Ariz.	1123 b:	B	129 c	22.9	do	
20.	Crockett, "	" "	1108 b:	B	129 c	23.3	do	
21.	San Francisco, Cal.	Douglas, Ariz.	1031 a:	A	96½	18.7	Rate complained of as unreasonable in ICC Docket	
22.	Crockett, "	" "	1012 a:	A	96½	19.0	11442 (64 ICC 405) decided November 3, 1921 and	
23.	San Francisco, Cal.	Douglas, Ariz.	1093 b:	B	96½	17.6	approved as reasonable in said proceeding.	
24.	Crockett, "	" "	1078 b:	B	96½	17.9		

(a) Shortest direct mileage - (b) Mileage via usual and customary routes of movement. (c) Bowie Comb. 96 cents plus 63 cents to Globe, 33¢ to Safford.

ROUTES: A - S.P.Co. - Mojave, Cal. - A.T.&S.F. - Phoenix, Ariz. - S.P.Co. B - Southern Pacific Co. direct.
C - Southern Pacific Co. - Mojave, Cal. - A.T.&S.F.Ry.Co.

STATEMENT SHOWING RATES ASSESSED ON CARLOAD SHIPMENTS OF SUGAR FROM SOUTHERN CALIFORNIA POINTS VIZ: BETTERAVIA AND OXNARD, CALIF., TO TUCSON, ARIZONA, AND EARNINGS THEREUNDER; RATES WHICH THE INTERSTATE COMMERCE COMMISSION DECLARED REASONABLE FOR REPARATION PURPOSES ON SAID SHIPMENTS AND EARNINGS THEREUNDER COMPARED WITH RATES PRESCRIBED AND/OR APPROVED AS REASONABLE ON SUGAR BY THE INTERSTATE COMMERCE COMMISSION IN DECISIONS CITED, AND EARNINGS THEREUNDER.

UNITED STATES DISTRICT COURT
(ARIZONA)
Case No. L-738; L-844
Exhibit No. F
Sheet No. 2

LINE	FROM	TO	MILES	ROUTE	RATES ASSESSED: Rate in cents per 100 lbs.	RATES ASSESSED: Revenue Per Ton Mile (Mills)	RATES WHICH INTERSTATE COMMERCE COMMISSION DECLARED REASONABLE FOR REPARATION PURPOSES: Rate in cents per 100 lbs.	RATES WHICH INTERSTATE COMMERCE COMMISSION DECLARED REASONABLE FOR REPARATION PURPOSES: Revenue Per Ton Mile (Mills)
			Rate during period July 1, 1922 to January 10, 1924					
1.	Betteravia, Calif.	Tucson, Ariz.	703	A	86⅛	24.6	73	20.8
2.	Oxnard, "	"	567	B	86½	30.5	73	25.9
			Rate during period January 11, 1924 to October 26, 1925					
3.	Betteravia, Calif.	Tucson, Ariz.	703	A	84	23.8	73	20.8
4.	Oxnard, "	"	567	B	84	29.6	73	25.9
			Rate during period October 27, 1925 to June 10, 1928					
5.	Betteravia, Calif.	Tucson, Ariz.	703	A	75	21.3	73	20.8
6.	Oxnard, "	"	567	B	75	26.5	73	25.9

- COMPARISONS -

LINE	FROM	TO	MILES	ROUTE	Rate in cents per 100 lbs.	Revenue Per Ton Mile (Mills)	REMARKS
7.	Betteravia, Calif.	Phoenix, Ariz.	652	C	96½	29.8	Rate prescribed in ICC 11532 (62 ICC 142)
8.	Oxnard, "	"	516	D	96½	37.4	decided June 22, 1922.
9.	Betteravia, Calif.	Globe, Ariz.	940	A	159 a	33.8	Rate in effect on January 10, 1922, approved as
10.	Oxnard, "	"	804	B	159 a	39.6	reasonable in ICC 13139 (81 ICC 134) decided June 27, 1923
11.	Betteravia, Calif.	Safford, Ariz.	856	A	129 a	30.1	do
12.	Oxnard, "	"	720	B	129 a	35.8	
13.	Betteravia, Calif.	Douglas, Ariz.	826	A	96½	23.4	Rate complained of as unreasonable in ICC Docket
14.	Oxnard, "	"	690	B	96½	28.0	11442 (64 ICC 405) decided November 3, 1921, and approved as reasonable in said proceeding.

(a) - Bowie, Ariz., combination 96 cents to Bowie plus 63 cents to Globe and 33 cents to Safford, Arizona.

ROUTES: A- Santa Maria Valley RR - Guadalupe, Cal. - Southern Pacific Company.
B- Southern Pacific Company direct.
C- Santa Maria Valley RR - Guadalupe, Cal. - Southern Pacific Company via Maricopa, Arizona.
D- Southern Pacific Company via Maricopa, Arizona.

(Testimony of J. L. Fielding.)

Thereupon, it was stipulated and agreed, by and between counsel for the plaintiffs and defendants, that pursuant to the Federal Control Act the President of the United States, acting through the Director-General of Railroads as his Agent, assumed possession, control and operation of the railroad properties of the defendants on or about December 29, 1917, and continued in such possession and control to and including February 29, 1920, and that during said period the Director-General was the active head of the United States Railroad Administration.

Thereupon, Witness Fielding testified further as follows:

"As shown on Exhibit "E", the rates in effect prior to June 25, 1918, were increased 22 cents on November 25, 1919, in place of the 25 per cent increase which had been made on June 25, 1918, under General Order No. 28 of the Director-General. This was done pursuant to Freight Rate Authority No. 8016 of the Director-General, and as provided in General Order No. 28 itself. General Order No. 28 provided for a 22-cent increase in rates from points in California to points taking Missouri River rates, and other points (including Tucson, Arizona) related thereto, applicable to carload rates on sugar."

Thereupon, there was offered in evidence through said Witness Fielding, and received as Defendants' Exhibit "G", a true and correct copy of Freight

(Testimony of J. L. Fielding.)

Rate Authority No. 8016 of the Director-General of Railroads, in words and figures as follows: [217]

EXHIBIT "G"—No. L-738

UNITED STATES RAILROAD ADMINISTRATION
Director General of Railroads
Division of Traffic—Western Territory
Transportation Building
608 South Dearborn Street
Room 1909
Chicago, Illinois
E. B. Boyd, Secretary
J. G. Morrison, Ass't. Secretary
Western Freight Traffic Committee

A. C. Johnson, Chairman, F. B. Houghton, S. H. Johnson, H. C. Barlow, Seth Mann, G. S. Maxwell.

Dockets Nos. 1990 & 2479 (F.R.A. 8016)

Chicago, Ill., May 27, 1919.

To the Chairmen, District Committees, and Freight Traffic Officers of Railroads under Federal Control, Western Territory.

RATE ADVICE NO. 3030

(Cancels Rate Advices Nos. 31 and 896)

CORRECTION OF CLERICAL OR TYPOGRAPHICAL ERRORS.

Freight Rate Authority No. 8016 dated May 16, 1919, has been issued by the Director of Traffic, reading as follows:

This will authorize publication of tariff changes

(Testimony of J. L. Fielding.)

to correct clerical or typographical errors under the following conditions:

1. If in amending tariffs to comply with General Order No. 28, Circulars of the Division of Traffic, or under Freight Rate Authorities, issued by the Director, Division of Traffic, there was an error which resulted in establishing rates, charges, regulations or practices different from those prescribed in said Order, Circulars or Authorities, correction may be made to bring about compliance with said Order, Circulars or Authorities.

2. If after rates, charges, regulations or practices have once been correctly published under General Order No. 28, Circulars of the Division of Traffic, or a Freight Rate Authority, and in a subsequent reissue of supplements or tariffs there was an error which resulted in establishing rates, charges, regulations or practices different from those authorized in such Order, Circulars or Authorities, correction may be made to restore them to the basis as authorized.

Tariffs issued under this Freight Rate Authority shall show reference both to it and to the Order, Circular or Freight Rate Authority which authorized the rates, charges, regulations or practices as corrected.

Tariff changes made under this Freight Rate Authority may be made effective on one day's notice if they effect reductions; if they bring about advances they may also be made on one day's notice, provided they can be made effective on the same date as the item to be corrected, otherwise

(Testimony of J. L. Fielding.)

they must be made effective on thirty day's notice.

This cancels Freight Rate Authorities Nos. 154 and 2769.

Please be governed accordingly.

A. C. JOHNSON,
Chairman. [218]

A-HJL

Thereupon, Witness Fielding testified further as follows:

"I have in my files original correspondence which shows how the changes authorized by Freight Rate Authority 8016 were made to apply to the particular rates here involved. This consists of a letter written by the Chairman of the San Francisco District Freight Traffic Committee on the United States Railroad Administration, addressed to various Traffic Officers, under date of August 15, 1919."

Thereupon, there was offered and received in evidence as Defendants' Exhibit "H", a true and correct copy of said original letter of August 15, 1919, from the Chairman of the San Francisco District Freight Traffic Committee of the United States Railroad Administration, referred to in the oral testimony of the witness, in words and figures, as follows: [220]

(Testimony of J. L. Fielding.)

EXHIBIT "H"—L-738

UNITED STATES RAILROAD ADMINISTRATION

J. T. S. Aug. 16, 1919

Director General of Railroads
Division of Traffic—Western Territory
64 Pine Street
Room 404
San Francisco, Cal.

San Francisco District Freight Traffic Committee
W. G. Barnwell, Chairman, G. W. Luce, H. K. Faye, S. H. Love, F. P. Gregson, John S. Willis.
F. W. Gomph, Secretary

August 15, 1919.
File No. RA 2068-A-4

SUBJECT: Increase in the Rate on Sugar, carloads, from California Points to Albuquerque, New Mexico, and El Paso, Texas.

Mr. T. A. Graham, A.F.T.M., Southern Pacific R.R., San Francisco, Cal.

Mr. W. G. Barnwell, A.F.T.M., A. T. & S. F. R. R., San Francisco, Cal.

Mr. H. K. Faye, G.F.A., Western Pacific R. R., San Francisco, Cal.

Mr. T. M. Sloan, F. G. A., L. A. & S. L. R. R., Los Angeles, Cal.

Gentlemen:

Referring to Mr. Graham's letter of July 18th, file 1—N—6053-B-Cal-NM, relative to the proper increase to be made in the rates on Sugar, carloads,

(Testimony of J. L. Fielding.)

from California points to points in Arizona, New Mexico, Nevada and Utah, by authority of that portion of General Order 28 which reads: "from points in California and Oregon to points taking Missouri River rates and points related thereto, under the Commission's Fourth Section order, increased 22 cents per 100 pounds". In order to determine just what was meant by the words "and points related thereto under the Commission's Fourth Section order" the Committee wired Director Chambers, who replied on August 12th as follows:

"In Item 6 of Sugar paragraph in General Order 28 our reference to Commission's Fourth Section orders had in mind the fact that in the Commission's Fourth Section orders covering Eastbound Sugar to Missouri River the Commission prescribed that via certain routes the Missouri River or Colorado rates should be held as maximum while via other routes they prescribed that the rates might be ten cents less than to the Missouri River and it was to those points which were held down by the Missouri River rate under these Fourth Section orders that item 6 prescribes a 22 cent increase. Note item 6 also provides for 22 cent increase to points taking Missouri River rates so if the rates to the destinations in question were prior to June 25th either the same as the Missouri River rates or held down by the Commission's order in the Missouri River case like the 10 cent higher basis then the advance should be 22 cents, otherwise 25%." [221]

(Testimony of J. L. Fielding.)

#2—Joint letter to Messrs. Graham, Barnwell, Faye and Sloan—RA 2068-A-4.

It would appear, therefore, that where rates to points west of the western boundary line of Group J territory published in tariffs of individual line or Bureau issue are the same as the rate to Colorado or Missouri River by reason of the application of those rates as maximum at intermediate points, such rates should be increased 22 cents per 100 lbs.

Further, that *were* rates to branch line points or to points on connecting lines are made by using said maximum rates to the junction, plus locals or arbitraries beyond the junction, those rates should be increased on the basis of 22 cents per 100 lbs. to the junction point and the local or arbitraries beyond the junction point, increased 25%, should be added thereto.

Attention is directed to the rates published in Agent Gomph's Tariff No. 23 Series to points on the Oregon Short Line north of Ogden, Utah, where rates may have been constructed on an arbitrary basis without regard to the rate fo Ogden but with regard to the rates from Missouri River to O.S.L. points. A check should be made of those rates and if it is found that any of them are constructed on such an arbitrary basis they should be increased 25%. Interested carriers are requested to look into this feature of that tariff and arrange to give Agent Gomph specific instructions as to the changes that should be made in those rates.

(Testimony of J. L. Fielding.)

Where rates have been published on basis of a 25% increase but which should have been increased 22 cents per 100 lbs., Freight Rate Authority No. 8016 of May 16th issued for the purpose of permitting corrections in clerical errors is sufficient authority to proceed. No additional Freight Rate Authority is necessary to cover the reissuance of rates which have not already been transposed to the General Order 28 basis.

Yours truly,

W. G. BARNWELL.

CC to Messrs.:

W. C. Barnes
E. J. Fenchurch
J. A. Reeves
Fred Wild, Jr.
F. W. Gomph [223]

Thereupon, WITNESS FIELDING testified further as follows:

Cross Examination:

"General Order No. 28, issued by the Director-General, was interpreted as requiring a 25 per cent general increase in the rates on sugar from California points. This construction was in error, as the order provided a specific increase of 22 cents. Freight Rate Authority No. 8016 contained the authority of the Director-General to correct rates erroneously increased 25 per cent, by publication of the changes on one day's notice. This authority

(Testimony of J. L. Fielding.)

covered the rates to Arizona points, including Tucson, because those rates were related to rates from California points to the Missouri River, under Fourth Section authority. In fact, the rates to Tucson, prior to 1918, were the same as the rates to the Missouri River.

A rate of 55 cents became effective from California points to Tucson, subject to a carload minimum of 60,000 pounds, on November 15, 1914. This was a voluntary reduction, at the request of the shippers. At that time the carriers had Fourth-Section relief. The 55-cent rate voluntarily established to Tucson represented a reduction at the request of the shippers, and not because of a desire to publish that rate to Chicago or to points in Colorado. The only reason, to my knowledge, for the voluntary reduction to 55 cents was the desire expressed by the shippers' representatives. So far as I know, the reductions to Arizona were the only ones made at that time. As my rate-history (Exhibit "E") shows, the 55-cent rate to Tucson was approved by the Commission in Docket 6806. To that was added a 22-cent flat increase, made by the Director-General under General Order 28 and Freight Rate Authority 8016, resulting in a rate of 77 cents. A 25 per-cent increase was made pursuant to Ex Parte 74, 58 I. C. C. 220, which added 19½ cents, and resulted in a rate of 96½ cents on August 26, 1920. The increase last mentioned was a general increase of all rates throughout the United

(Testimony of J. L. Fielding.)

States. On June 27, 1921, the carriers voluntarily reduced [225] the rate to 96 cents. In 1922, following Reduced Rates 1922, 68 I. C. C. 676, the rate was further reduced 9½ cents, or to 86½ cents. This was a general 10 per cent reduction throughout the United States. On February 25, 1925, as a result of the Second Phoenix Case, 95 I. C. C. 244, the rate to Phoenix was reduced to 71 cents. The rate to Tucson became 84 cents on January 11, 1924, and was further reduced on October 27, 1925, when the rates to Bowie were reduced as a result of the Solomon-Wickersham Case, 101 I. C. C. 667. The Commission specifically approved the rate to Tucson in Docket 6806 on May 1, 1915, 34 I. C. C. 158. I do not know of any decision after that date, and until Docket 16742, which dealt specifically with the rate to Tucson.

Until November 7, 1926, Phoenix was on a branch line; that is to say, on the Arizona Eastern up until 1924, that carrier being at the time a subsidiary of the Southern Pacific, and after 1924 on the Phoenix branch of the Southern Pacific. It is generally true that rates to branch-line or foreign-line points are higher than to main-line points, a branch-line or joint-line arbitrary being added. A rate might be reasonable to Phoenix, higher than to a point on the main line; and for a time, prior to 1921, the carriers, with the Commission's approval, charged higher rates to Phoenix than to main-line points.

(Testimony of J. L. Fielding.)

My Exhibit "F" shows a rate of 96½ cents from San Francisco to Phoenix. In 1922 the Phoenix rate was reduced to 86½ cents. My Exhibit "F" does not show that reduction, and that was not its purpose. The exhibit is not incorrect, for it does not purport to show what rate was in effect to Phoenix after July 1, 1922. For the purposes of the comparison, we took the rate prescribed by the Commission to Phoenix, which was 96½ cents; and while this was not the rate actually charged to Phoenix, because of subsequent voluntary reductions, it was the rate which the Commission stated could be charged on shipments to Phoenix. The rates to Phoenix and to [226] other points were voluntarily reduced 10 per cent in 1922, in response to the Commission's suggestion in Reduced Rates 1922, 68 I. C. C. 676. Exhibit "F" compares the rates to Tucson, actually charged upon plaintiffs' shipments, with the Commission-made rate to Phoenix of 96½ cents, although the latter was not actually in effect at Phoenix after July 1, 1922.

Globe was on the Arizona Eastern up to 1924, at which time the Arizona Eastern became a part of the Southern Pacific, and Globe became a Southern Pacific branch-line point. It was never on the main line of the Southern Pacific. The rate to Globe was approved by the Commission. Tucson has always been a main-line point. The general reduction of 10 per cent also applied to the rates to Globe and

(Testimony of J. L. Fielding.)
Safford, Safford also having been a branch-line point."

The witness was then asked by plaintiffs' counsel whether, in attempting to reach reasonable rates for Arizona, carriers had contended that such rates should be 120 per cent of the Memphis-Southwestern rates; to which question defendants objected upon the ground that the same was improper cross-examination, which objection was overruled by the Court. Defendants then and there duly excepted to said ruling of the Court.

Witness Fielding then testified further as follows:

"It is not correct that carriers have contended that rates to and from Arizona should be 120 per cent of the Memphis-Southwestern rates. We have never made any contention that rates from California to Arizona should bear any relation to the rates in the Southwest. We have made comparisons showing that the rates in this territory should be anywhere from 30 per cent to 40 per cent higher than the general level of the Southwestern rates. I appeared in Docket 16742, but the carriers never took any position there that the Arizona rates on sugar should be 120 per cent of the Memphis-Southwestern rates.

I have not brought with me the actual tariffs in which the [227] rates were published as shown upon my exhibits. The numbers of the tariffs are shown,

(Testimony of J. L. Fielding.)

and all tariffs shown were duly published and filed.

In determining the rate from San Francisco to Tucson, no arbitrary was added over the rate from Los Angeles to Tucson. The rate prescribed for the future in Docket 16742 was 65 cents from the Los Angeles group, and 77 cents from the San Francisco group."

Re-direct Examination:

"I am familiar with the rate-adjustment to Phoenix following 1921. At all times subsequent to the First Phoenix Case, decided in June, 1921, the rates to Phoenix were the same as to Maricopa and Tucson up until 1925, regardless whether Phoenix was on a branch line or on the Arizona Eastern. The purpose of my Exhibit "F" was to compare the rates charged with the rates which the Commission had prescribed or approved for application on the same commodity to other destinations. It was not my purpose to compare the rates charged with the rates actually in effect to these other points. At all times prior to 1924 the Arizona Eastern was a solely controlled subsidiary of the Southern Pacific."

Thereupon defendants rested.

Thereupon, plaintiffs offered certain testimony in rebuttal as follows:

TESTIMONY OF L. G. REIF:

Direct Examination.

(It was stipulated, on behalf of defendants, that Mr. Reif was qualified, as an expert familiar with rates and tariffs, and competent to compile exhibits showing such rates and tariffs.)

"I am Rate Expert for the Arizona Corporation Commission, and have been employed in that position since 1925. I am qualified to appear before the Interstate Commerce Commission. The statement which you show me is an exhibit setting forth the average distances in miles from the southern California group to various groups in [228] Arizona designated by name, together with the rates on sugar prescribed in the Memphis-Southwestern Cases, rates made 120 per cent of the Memphis-Southwestern rates, and rates prescribed herein for purposes of reparation and for the future, together with certain other comparisons. Rates from northern California, made on the basis of arbitraries over the southern California rates, are shown in columns 7 to 11, inclusive. The sources from which the information shown on the exhibit is taken are set forth on sheet 2."

Thereupon, plaintiffs offered in evidence as their Exhibit 5, the statement identified and referred to in the testimony of the witness; to which defend-

(Testimony of L. G. Reif.)

ants objected upon the ground that the same was not proper rebuttal, in that it was not offered in rebuttal of any testimony submitted by the defendants in their case in chief, and did not undertake to deal with any testimony offered by defendants' witness, or any showing made in defendants' exhibits. Defendants' said objection was overruled by the Court, to which ruling defendants then and there duly excepted. Said statement was thereupon received in evidence as Plaintiffs' Exhibit 5, and is, in words and figures, as follows: [229]

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	FROM SOUTHERN CALIFORNIA GROUP							FROM NORTHERN CALIFORNIA GROUP				
		1	2	3	4	5	6	7	8	9	10	11
TO	(a) Average Distance	Rates Charged	Memphis-Southwestern Sugar Rates	120 Per Cent Memphis-Southwestern Sugar Rates	Rates Prescribed for Reparation Period	120 Per Cent Consolidated Southwestern Sugar Rates	Rates Prescribed for Future	Arbitraries	Rates in Column 3 Plus Arbitraries	Rates Prescribed for Reparation Period	Rates in Column 5 Plus Arbitraries	Rates Prescribed for Future
	(Miles)		(Cents)	(Cents)	(Cents)	(Cents)	(Cents)	(Cents)	(Cents)	(Cents)	(Cents)	(Cents)
Group 1-												
Yuma	267	SEE	40	48	66	45½	46	20	68	66	65½	66
Group 2-												
Kingman	388		47	56	68	56½	57	12	68	69	68½	69
Group 4-		RULE										
Tucson												
Prescott	539		55	66	73	65	65	12	78	77	77	77
Williams												
Flagstaff		V										
Group 5-												
Winslow		STATEMENTS										
Bisbee												
Bowie	635		59	71	75	72	72	12	83	84	84	84
Douglas												
Holbrook												
Group 6-												
Safford	674		60	72	77	74½	75	12	84	87	86½	87
Group 7-												
Gallup												
Clifton	752		64	77	79	79	79	10	87	89	89	89
Globe												

REFERENCES

Column 1 See Rule V Statements (or reparation claims).
2 For rates see 77 I.C.C. 595.
3 Rates shown in 77 I.C.C. 595 plus 20 per cent.
4 140 I.C.C. 180
5 Rates shown in 123 I.C.C. 452, 477 plus 20 per cent.
6 140 I.C.C. 181.
7 Arbitraries added by Commission to the rates from Southern California Groups to make the through rates from Northern California Groups, 140 I.C.C. 181.
8 Memphis-Southwestern sugar rates plus 20 per cent plus arbitraries.
9 140 I.C.C. 180.
10 Consolidated Southwestern sugar rates plus 20 per cent plus arbitraries.
11 140 I.C.C. 181.
(a) See Docket 16742, 140 I.C.C. 171, at 178.

(Testimony of L. G. Reif.)

Cross Examination:

"Exhibit 5 was prepared in Mr. Blaine's office, under his supervision, and afterwards handed to me to be introduced here. I checked the exhibit to see that it was correct, and helped to a certain extent in its preparation. We did not show the distances from northern California points, or use rates based on the Memphis-Southwestern scale applied to those distances; we used arbitraries instead, because that is the usual practice, and was followed by the Commission in prescribing the sugar rates. I do not assert that 120 per cent of the Memphis-Southwestern scale is a measure of the reasonableness of the rate from Los Angeles to Yuma, Arizona, or any other Arizona destination. I do not favor 120 per cent of the Memphis-Southwestern scale as a fair measure of the rates from northern California to Tucson, or in any other instance. I say that the rates should be lower than 120 per cent. I failed to show the mileages from northern California points to the Arizona destinations because we used the arbitraries, in the same manner as the Commission. This comparison is predicated upon the theory that the carriers have contended that 120 per cent of the southwestern rates is the measure of a reasonable rate from California to Arizona, although carriers have also used 130 per cent. I used 120 per cent because that is the percentage set up in the Sugar Cases.

We were interveners in the First Phoenix Case, in which the Commission prescribed 96½ cents from

(Testimony of L. G. Reif.)

California points to Phoenix, and I am familiar with the case to that extent. I have never made any comparison between the 96½-cent rate, prescribed in that case from Los Angeles to Phoenix, and rates derived from the southwestern scales for the same distance, either on the 120-per-cent basis, or otherwise."

Thereupon, defendants moved the Court to strike Exhibit 5 from the record, upon the ground that the same was incompetent, in that it was not prepared by the witness or at his direction; and upon [230] the further ground that it was predicated upon the assumption of facts not in evidence, and upon assumptions shown to be contrary to the undisputed evidence; and upon the further ground that it was not proper rebuttal, and not in rebuttal of any showing made by defendants in their case in chief. Defendants' said motion was denied and overruled by the Court, to which ruling defendants then and there duly excepted.

Thereupon both parties rested.

Thereupon, defendants moved the Court to render and enter judgment in each of these cases, in favor of defendants and against the plaintiffs, based upon the pleadings and the evidence, which motion was denied; to which ruling of the Court denying their said motion defendants then and there duly excepted.

Thereafter and on November 9, 1932, the causes were orally argued by counsel for the respective parties, and submitted to the Court for decision, subject to further hearing upon the question of the fees to be allowed to plaintiffs' attorneys and counsel in the event plaintiffs should finally prevail. Thereafter, and on December 27, 1932, the Court announced that he was of opinion that after the final submission of the causes, plaintiffs would be entitled to recover.

Thereafter, and on January 17, 1933, and pursuant to stipulation and agreement of the parties, said causes came on regularly for hearing with respect to the amount of the attorneys' fees to be allowed by the Court to plaintiffs' attorneys. To support their contentions as to said attorneys' fees, plaintiffs offered the following testimony, to-wit:

(It appearing that Samuel White, Esquire, one of the plaintiffs' counsel, was unable to be present, it was agreed by and between plaintiffs and defendants that if Mr. White were present and sworn as a witness, he would testify substantially as appears in the following statement): [231]

STATEMENT OF SAMUEL WHITE:

"I have been a practicing attorney for fifty-one years, with experience before the courts of Arizona and Oregon and various federal courts, including

(Testimony of Samuel White.)

the United States Supreme Court. In my practice I have had considerable experience in connection with cases based upon reparation orders of the Interstate Commerce Commission. In the instant cases and other cases of this same kind now under discussion I have expended a great deal of time, effort and energy in preparation, including preparation of the complaints, research of the law, preparation of briefs and arguments, and preparation for trial. In these cases I have collaborated with Mr. Snell. The handling and prosecution of these cases involves a great deal more effort and professional ability than would be required in an action upon a promissory note or the foreclosure of a mortgage.

After considering the amount involved in the cases and the character of the services rendered, it is my opinion that a reasonable fee for the services rendered in connection with these cases before the District Court is 25 per cent of the total amount involved; that is to say, 25 per cent of the principal, plus interest, due to date."

TESTIMONY OF FRANK L. SNELL, JR.

Direct Examination.

"My name is Frank L. Snell, Jr. I am a practicing attorney, and a graduate of the Kansas University Law School. (Mr. Snell's qualifications were then admitted by defendants). My practice has been before the Superior Courts of Arizona, and the

(Testimony of Frank L. Snell, Jr.)

courts of New Mexico and Missouri, and before various federal courts, including the Supreme Court of the United States. I have had experience in the preparation, handling and disposition of reparation cases such as the present cases, which experience goes back over the past four years. Particular and special knowledge is essential in cases of this kind, which I consider to be in the nature of a special class [232] of legal work. I have made a special study of these cases, and of the law involved. I have been associated with Judge White in the instant cases. Among the services rendered in connection with these particular cases were the following: preparation of the complaints; argument of demurrer and preparation of authorities in No. L-844; an attempt to reach an agreed statement of facts in each case which was, however, unsuccessful; and the actual preparation for trial, including consultation with Witness Reif, and the preparation of exhibits and other evidence. It was also necessary to anticipate the defendants' evidence, and therefore to prepare rather full and comprehensive trial briefs, all of which was done in collaboration with Judge White. The next was the trial of the cases, following which there was oral argument, and the preparation of briefs which I submitted. There has also been the necessary preparation for this hearing on attorneys' fees, which will be followed, I presume, by preparation of findings of fact, conclusions of law and the judgments. In cause No. L-738-Phoenix,

(Testimony of Samuel White.)

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courts of New Mexico and Missouri, and before various federal courts, including the Supreme Court of the United States. I have had experience in the preparation, handling and disposition of reparation cases such as the present cases, which experience goes back over the past four years. Particular and special knowledge is essential in cases of this kind, which I consider to be in the nature of a special class [232] of legal work. I have made a special study of these cases, and of the law involved. I have been associated with Judge White in the instant cases. Among the services rendered in connection with these particular cases were the following: preparation of the complaints; argument of demurrer and preparation of authorities in No. L-844; an attempt to reach an agreed statement of facts in each case which was, however, unsuccessful; and the actual preparation for trial, including consultation with Witness Reif, and the preparation of exhibits and other evidence. It was also necessary to anticipate the defendants' evidence, and therefore to prepare rather full and comprehensive trial briefs, all of which was done in collaboration with Judge White. The next was the trial of the cases, following which there was oral argument, and the preparation of briefs which I submitted. There has also been the necessary preparation for this hearing on attorneys' fees, which will be followed, I presume, by preparation of findings of fact, conclusions of law and the judgments. In cause No. L-738-Phoenix,

(Testimony of Frank L. Snell, Jr.)

the total amount involved, as computed by Judge White and myself, being principal, plus interest to January 16, 1933, is $1,096.25; the corresponding total in cause No. L-844-Phoenix is $1,779.70.

In my opinion a fee of 25 per cent of the total amount involved would be a reasonable fee. I base that opinion upon consideration of all the work necessary in these cases and the other reparation cases now being considered, and considering also the time expended, which was 182 office hours and 30 court hours, not including Judge White's time. I have checked this figure, by computing our office time on the basis of $15.00 per hour and our time in court at $200.00 per day."

Cross Examination.

"I justify $15.00 per hour for office work on the basis of charges made to insurance companies and companies which are pretty careful about their fees and it has always been accepted. It is [233] the regular charge of our office. The regular charge of our office for a day in court is $200.00. We are paid at the rate of $15.00 per hour for office work in other transactions not involving trial work. That is not an arbitrary charge, for some cases justify larger and some cases smaller charges. The preparation in this case was not as difficult as the original preparation in the Arizona Grocery Case, but one has to be very careful to be sure that the complaint agrees with the Commission's order. It is not a matter that can be treated with indifference. You

(Testimony of Frank L. Snell, Jr.)

do not have to pay any more attention to detail in a case of this kind than in the case of a mortgage foreclosure. I acquired considerable knowledge of the Interstate Commerce Act in the Arizona Grocery Case, but I spent a great deal more time in that case than in the present cases upon the preparation.

In cases of this character $200.00 for each court day would be the minimum fee. I do not know about any other firm's collections, though other firms do charge that for their work. In public liability cases, with considerable amounts involved, where we are successful, $200.00 per day is the minimum charge. The charge of $15.00 per hour for office work is based upon the study made in our own office some years ago. I have made a study of the matter among the attorneys here in Phoenix, and found that various amounts were being charged, depending upon the men doing the work.

I do not believe there is any office, and ours is no exception, that works arbitrarily on an hourly basis. I have used that basis in checking the fee in these cases and found that it approximated the 25 per-cent fee which I consider to be fair. In our insurance company practice the clients have accepted the basis above outlined, although in the trial of cases we are upon a per diem basis and the amount paid depends on the case. We have not accepted compensation from the insurance com-

(Testimony of Frank L. Snell, Jr.)
panies on the basis of $100.00 retainer, and $100.00 per day fee.

My figure of $15.00 per hour for office work [234] approximates $100.00 per day, although the actual work in the office will not exceed five or six hours. On that basis, the average charge for each day's work figures about $75.00, or possibly less."

Thereupon plaintiff rested.

Thereupon defendants offered testimony with respect to the amounts to be allowed as plaintiffs' said attorneys' fees as follows:

TESTIMONY OF BURTON MASON:

Direct Examination:

"My name is Burton Mason; I am Commerce Attorney for the Southern Pacific Company. I have had 10½ years' experience in commerce work. I am admitted to practice in California and in the various federal courts, including the Supreme Court. I am also admitted to practice before the Interstate Commerce Commission, the Board of Tax Appeals, and the Treasury Department. I have had varied experience as a commerce attorney, in the handling of rate and traffic matters, and reparation cases. I have appeared on behalf of shippers, prior to my connection with the Southern Pacific, and during the last 6½ years as a representative of the carriers. In my experience I have become acquainted with the fees charged and al-

(Testimony of Burton Mason.)

lowed for services of counsel in reparation cases, from the standpoint of the shippers as well as of the defendant carriers.

I have made a study of various cases in which reparation was involved, including cases in which I have myself participated. In the Meeker Case, which went to the Supreme Court, the total amount of the judgment was $109,000, and the fee allowed in the District Court, as corrected by the Supreme Court, was $7,500.00, or less than 7½ per cent of the total. In the Feintuch Case, 191 Fed. 482, which was also a reparation case, total judgment was for $464.55, a comparatively small amount; and an attorney's fee of $150.00, or about one-third, was allowed. In the Ingalls Case, 51 Fed. (2d) 310 the recovery was $196.29. Although the prosecution of the case in- [235] volved considerable labor, as will be seen from the fact there were two prior decisions, the fee allowed was $75.00. This fee took into consideration the amount involved. In the Lewis-Simas-Jones Case, finally decided by the Supreme Court, 283 U. S. 654, the amount finally paid on account of the reparation award was $1,700.00. This case was tried in the State Court of San Francisco, afterwards appealed to the District Court of Appeal of California, and then submitted to the Supreme Court of California on petition for hearing by that court after decision by the appellate court. It was also heard by the United States Supreme Court on writ of certiorari, where it was briefed and orally argued. The attorney's fee was fixed by arbitration, at $1,-

(Testimony of Burton Mason.)

725.00 to cover all the work in all four courts. If one-third of this fee was allowed for the work in the trial court, it would approximate $575.00, or about 33 per cent. In the World Publishing Company Case, reported 16 Fed. (2d) 130, the total judgment was approximately $9,000.00, and the fee allowed was $2,500.00, covering the work in the trial court and in the Circuit Court of Appeals. In the Montrose Case, 25 Fed. (2d) 750, the total amount of the judgment, plus interest, was $80,000, and the attorney's fee allowed was $7,500.00, or about 10 per cent. In the Baer Bros. Case, 200 Fed. 614, the amount of reparation, not including interest, was $723.00, and the attorney's fee was $250.00, which was considerably less than 25 per cent of the total recovery including interest. In the Consolidated Cut Stone Case, 39 Fed. (2d) 661, the total of the judgment was $30,624.00. The total fee of plaintiff's attorney, covering proceedings in the District Court, the Circuit Court of Appeals, and on petition for certiorari to the Supreme Court, was $7,500.00. If that case were taken as an index in the present case, it would indicate a fee of not more than 15 per cent of the total recovery. In the Sloss-Sheffield Case, finally decided about 1928, 269 U. S. 217, the total judgment including interest was in excess of $300,000.00. The case was vigorously [236] fought. The attorney's fee allowed was $15,000.00, or almost exactly 5 per cent. In the Mills Case, 226 Fed. 812, the amount of the recovery was in excess of $9,000.00. There was a trial before a jury and afterwards proceedings were

(Testimony of Burton Mason.)

had in the Circuit Court of Appeals and in the Supreme Court. An attorney's fee of $1,000.00 was allowed for the services in the trial court and the same amount for services in the Court of Appeals. The fee for the work in the trial court was thus about 11 per cent of the amount recovered. In the Minds Case, 237 Fed. 267, the total amount recovered was $49,711.00, and the fee allowed was $10,000, which covered all of the work in the trial court and upon appeal to the Circuit Court of Appeals and the Supreme Court of the United States. In the Standard Oil Case, recently decided, the amount of reparation, exclusive of interest, was $380,000.00, and the amount of the judgment, exclusive of attorneys' fees and costs, was $530,000.00. The case was settled by paying the principal amount, exclusive of interest, or $380,000.00, plus $20,000.00 to cover attorneys' fees, costs and other expenses, or a little more than 5 per cent. I participated actively in that case.

In my opinion a reasonable fee in these cases would be 10 per cent of the amount recovered. While collections may pay 20 per cent, those are small collections, whereas these cases and the other similar cases now being considered are not small cases, the total amount involved being about $26,000.00. While this has taken several suits, they have all been consolidated and practically tried as one. All that was required was the preparation of a simple form of complaint in each case, the form being varied only as to names of plaintiffs and destinations, and amounts. The essential allegations

(Testimony of Burton Mason.)

are identical. While 10 per cent might be comparatively inadequate in one of the smaller cases, it would be more than enough in one of the other cases where the work has been the same but the amount of the recovery happens to be greater. [237]

In the Union Oil Company and Shell Oil Company Cases, in which I participated, plaintiffs obtained judgments after lengthy proceedings, including a trial and oral argument. The judgments, including interest on the reparation awards amounted to about $173,000.00. The trial court in those cases, after hearing on the question of counsel fees, awarded a fee of 10 per cent of the total recovery. That money was never actually paid because the cases were settled by paying the principal sums of reparation, without interest, but with a fee of $15,000.00 to cover all services.

In these cases and in the other cases of similar character here being considered, Mr. Snell has pointed to a total of 182 office hours and 30 court hours, and proposes that his total compensation for this work should be $3,762.00. The annual salary of a United States District Judge is $10,000, less whatever income tax may be assessed. In the Train Limit Cases, with which I am somewhat familiar, the Master has done far more than three times the amount of work claimed to have been done by Mr. Snell and has received a fee of $11,000.00. On the basis of the Master's compensation, Mr. Snell's fee in all of these cases should be about $1,500.00, or about 10 per cent. If we suppose that the

(Testimony of Burton Mason.)

Court sits 250 working days a year, the Judge's compensation is equal to $40.00 per day; and yet plaintiff's counsel claims $100.00 for office work and $200.00 a day for court work. It is probable that all judges of the District Courts are underpaid, particularly the judges who have to listen to reparation suits."

Defendants thereupon rested, and the testimony was closed.

Thereupon the Court stated that in his opinion a fee of about 20 per cent of the total amount involved would be a reasonable attorney's fee; and did then and there render and enter an order allowing to plaintiff's attorneys 20 per cent of the total amount recovered as the fees to be paid the plaintiffs' attorneys and counsel, when and if judgment should be rendered for the plaintiffs. [238] To the Court's said order, finding and ruling defendants then and there in open court duly excepted.

Thereupon the Court ordered special findings of fact and conclusions of law to be proposed, and withheld judgments until said findings and conclusions should be settled.

Thereafter, the plaintiffs did file their written request for special findings of fact and conclusions of law by the Court; and defendants filed written proposed amendments and additions to the findings of fact and conclusions requested by the plaintiffs; and defendants further filed written special findings of fact and conclusions of law requested by them.

Thereafter, and on the 12th day of May, 1933, the Court did in open court hear argument upon such proposed findings and conclusions, and the amendments and additions to plaintiffs' requested findings of fact and conclusions of law, as proposed by defendants; and defendants did then and there, by their counsel, duly request the Court by written instrument, and also orally in open court, to make the following findings of fact, to wit (Paragraphs are numbered according to the written Special Findings of Fact requested by defendants, and on file in these cases:

> 5. Thereafter, under date of March 12, 1928, said Commission made and entered its report and order in said Dockets Nos. 16770, Sub-No. 2, and 17549, Sub-No. 1, and associated cases (including a proceeding known as Docket No. 16742) decided concurrently therewith, which said report of the Commission is contained in its official reports: 140 I. C. C., at pp. 171 and following. A true and correct copy of said report and order is annexed to the complaint on file in Cause No. L-738-Phoenix, and marked Exhibit "A". Reference is hereby made to said report for further particulars.
>
> 6. Thereafter, pursuant to said report, and in accordance [239] with Rule V of the Rules of Practice of said Commission, plaintiffs prepared the Rule V statements showing the shipments

upon which reparation was claimed, copies of which said Rule V statements are attached to the complaints on file herein, as heretofore set forth.

7. Thereafter, under date of September 7, 1929, said Commission made and entered its order directing and requiring defendant Southern Pacific Company to pay to plaintiffs Baffert and Leon, on or before October 22, 1929, as reparation and damages, the amount set opposite the name of said defendant in said order, with interest thereon at the rate of 6 per cent per annum from the respective dates of payment of charges as shown in said Rule V statement annexed as Exhibit "B" to the complaint on file in Cause No. L-738-Phoenix, as heretofore referred to. A copy of said reparation order is annexed as Exhibit "C" to said complaint in Cause No. L-738-Phoenix, and is hereby referred to for further particulars.

Thereafter, under date of April 13th, 1930, said Commission made and entered its order directing and requiring said defendants therein named to pay to plaintiff Wheeler-Perry Company, on or before the 28th day of May, 1930, as reparation and damages, the amounts set opposite their respective names in said order, with interest thereon at the rate of 6 per cent per annum from the respective dates of the payment of charges as shown in said Rule V statement

annexed as Exhibit "A" to the complaint in Cause No. L-844-Phoenix, as heretofore referred to. A copy of said reparation order is annexed as Exhibit "B" to the complaint in Cause No. L-844-Phoenix, and is hereby referred to for further particulars.

9. Under date of May 25, 1915, in response to a complaint [240] attacking as unreasonable the rates on sugar in carloads from all points in California to all destinations in Arizona (including Tucson) said Commission, after full hearing and investigation, rendered its report and order in a proceeding known and entitled as Docket No. 6806, Ariz. Corp. Comm. v. A. T. & S. F. Ry. Co., et al., 34 I. C. C. 158. Reference is hereby made to said report of said Commission, as set forth in its official reports, for further particulars.

As more fully appears from said report, the complaint in said Docket No. 6806 was filed with the Commission on April 15, 1914. During the pendency of said proceeding the carriers named as defendants therein voluntarily reduced their rates on sugar from all points of origin in California to substantially all destinations in Arizona, including Tucson. Such voluntary reductions included in particular the establishment of rates on sugar, in carloads, from all said points in California to all said destinations in Arizona, subject to a minimum weight of 60,000 pounds per car, which rates

were in all cases less than the rates theretofore applying from and to the same points in connection with a carload minimum weight of 36,000 pounds. In and by its said report in said Docket No. 6806 said Commission duly found, among other things, that the rates on sugar to Tucson, as voluntarily reduced during the pendency of said proceeding, were and in future would be just and reasonable. No order respecting said rates to Tucson was made by said Commission in said Docket No. 6806.

The character and extent of said reductions, and in particular of the reductions in the rates to Tucson, is set forth in said report in said Docket No. 6806.

10. In compliance with the Commission's said findings in said Docket No. 6806, the carriers parties to the rates [241] therein involved continued until and including December 29, 1917, the rates on sugar in carloads, from the several points in California to the destination in Arizona involved in this cause, which were in effect on said May 25, 1915. Upon said December 29, 1917, possession, control and operation of the railroad properties of the defendants and generally of all other railroad common carriers throughout the United States were assumed by the Director-General of Railroads, as Agent of the President of the United States, and said Director-General continued in such possession, control and operation until and including Feb-

ruary 29, 1920. Said rates heretofore last-mentioned were continued in effect by said Director-General from and after said December 29, 1917, until, but not including, June 25, 1918. On June 25, 1918, said Director-General caused said rates to be increased as specified and provided in General Order No. 28, issued by said Director-General pursuant to authority conferred by the Federal Control Act, 40 Stat. L. 456. Upon November 25, 1919, said rates, as modified by the changes made pursuant to said General Order No. 28, were further modified pursuant to and as provided by an order duly issued by said Director-General, styled "Freight Rate Authority No. 8016, dated May 16, 1919". Said order last mentioned, also issued pursuant to authority duly conferred by said Federal Control Act, brought about a general readjustment of rates on sugar throughout the western part of the United States. On February 29, 1920, said Director-General, by order duly made, further modified said rates heretofore mentioned by canceling the rate from California points to Tucson, then and theretofore in effect, subject to a carload minimum weight of 36,000 pounds. The rate then and theretofore in effect from and to said points, [242] subject to a carload minimum weight of 60,000 pounds, was continued without further modification until, but not including, August 26, 1920.

11. On March 1st, 1920, upon the termination of Federal control, the several defendants and

other carriers resumed possession and control of their railroad properties. Said carriers, parties to the rates on sugar from said California points to Tucson, maintained from and after said last mentioned date until, but not including, August 26, 1920, said rate on sugar subject to a carload minimum weight of 60,000 pounds which was in effect from and to said points at the date of termination of Federal control. On said date last mentioned said rate was increased to 96½ cents per hundred pounds, as authorized by the report and order of said Commission in the proceeding entitled Ex Parte 74, Increased Rates 1920, 58 I. C. C. 220, to which report reference is hereby made for further particulars. Said report and order authorized general percentage advances in interstate freight rates throughout the United States.

12. Said rate of 96½ cents, as made effective August 26, 1920, was voluntarily reduced by said defendants, on July 27, 1921, to 96 cents; and was further voluntarily reduced by said defendants, effective July 1st, 1922, to 86½ cents. Said reduction last-mentioned was in conformity with the recommendations made by said Commission in its report in a proceeding entitled: Reduced Rates 1922, 68 I. C. C. 676, to which report reference is hereby made for further particulars. Said rate of 86½ cents last-mentioned was further voluntarily reduced by said defendants, on or about January 11, 1924, to 84 cents. Said rate of 84 cents con-

tinued in effect until and including October 27, 1925, upon which date the same was reduced to 75 cents, pursuant to the [243] findings and order of said Commission in a proceeding numbered and entitled Docket No. 14140, Solomon-Wickersham Co. v. S. M. V. R. Co., 101 I. C. C. 667, to which report reference is hereby made for further particulars. Said rate of 75 cents remained in effect until, but not including, June 11, 1928, upon which date the same was reduced to 65 cents per hundred pounds from points in southern California, including Betteravia and Oxnard, and advanced to 77 cents per hundred pounds from points in northern California, including San Francisco and Crockett, pursuant to the findings and order of said Commission in said Docket No. 16742, heretofore referred to. Said rates of 86½ cents, 84 cents and 75 cents, which were successively in effect during the period July 1, 1922, to June 10, 1928, both inclusive, were the rates assessed upon plaintiffs' shipments during the period of movement thereof, as shown upon said Rule V statements annexed to the complaints on file herein, and are the rates referred to "As Charged" upon said statements.

13. On or about the 22nd day of June, 1921, and after full hearing and investigation, said Commission rendered its report and order in a proceeding entitled Docket No. 11532, Traffic

Bureau, Phoenix Chamber of Commerce, et al. v. Director-General, et al., 62 I. C. C. 412 (to which report reference is hereby made for further particulars) wherein and whereby said Commission found, among other things, that the reasonable rate thereafter to be applied to the transportation of sugar in carloads, minimum weight 60,000 pounds, from points of origin in California (including the points of origin of the plaintiffs' shipments involved herein) to Phoenix, Arizona, should not exceed 96½ cents per hundred pounds. The usual and customary routes of movement from said points of origin in California to Phoenix, Arizona, [244] were identical with the corresponding routes of movement of shipments from said points to Tucson, Arizona, as far as and including Maricopa, Arizona, a point 35 miles by rail from Phoenix; and the distances over said routes of movement from said points of origin in California to Phoenix were at all times, during the period of movement of the plaintiffs' shipments involved herein, 51 miles less than the corresponding distances from said points of origin to Tucson. Said order of said Commission in said proceeding last-mentioned, Docket No. 11532, specified that said rate of 96½ cents should be observed as the reasonable maximum rate from California points to Phoenix until the further order of said Commission; and no further order with respect to said rate was made by said Commis-

sion during the period of movement of the plaintiffs' shipments, or until January 6, 1925, effective February 25, 1925. During all of said period, and prior to February 25, 1925, said rate of 96½ cents was, and continued to be, the duly established and conclusive measure of a just and reasonable rate on sugar from the points of origin in California involved herein to Phoenix and related points in Arizona, including Tucson in particular.

14. On November 3, 1921, and after full hearing, said Commission rendered its report and order in a proceeding entitled Docket No. 11442, Traffic Bureau, Douglas Chamber of Commerce & Mines v. A. T. & S. F. Ry. Co., et al., 64 I. C. C. 405 (to which report of said Commission reference is hereby made for further particulars), in response to a complaint alleging, among other things, that the rates on sugar in carloads from points in California, including all of the points of origin of plaintiffs' said shipments, to Douglas, Arizona, were unreasonable and otherwise in violation of [245] the Interstate Commerce Act. In said report said Commission found that said rate, which at the date of said complaint was 96½ cents per hundred pounds, was and in future would be not unreasonable. No further findings or order with respect to said rate on sugar to Douglas were made by said Commission, subsequent to the report in said Docket No. 11442, until March 12, 1928, the date of the findings and order in

said Docket No. 16742 and associated cases, to which reference has heretofore been made. The direct and customary routes of movement of the shipments of the plaintiffs from points in California to Tucson, Arizona, during all of the period of the movement thereof, were identical with the corresponding routes over which shipments of sugar moved from said points in California to Douglas, Arizona, so far as and including Tucson itself; and the distances from said points of origin in California to Douglas, Arizona, were, during all of said times, 123 miles greater than the corresponding distances from said points of origin to Tucson. During all of the period of movement of the plaintiffs' shipments, said rate of 96½ cents to Douglas, found reasonable by said Commission in its report in said Docket No. 11442, was and continued to be the duly established and conclusive measure of a reasonable rate for the transportation of shipments of sugar from the points of origin of plaintiffs' shipments to Douglas and related destinations in Arizona, including Tucson.

15. On June 27, 1923, after full hearing and investigation, and in response to a complaint alleging, among other things, that the rates on sugar, in carloads, from points in California, including the points of origin of plaintiffs' shipments, to destinations in Arizona on the Globe Division of the Arizona Eastern Railroad Company (now the Globe Branch [246] of the

Southern Pacific Company) were unreasonable and otherwise in violation of the Interstate Commerce Act, said Commission rendered its report and order in a proceeding entitled Docket No. 13139: Graham & Gila Counties Traffic Assn. v. A. E. R. Co., et al., 81 I. C. C. 134. In said report said Commission found and declared that said rates, as in effect on January 18, 1922, were and in future would be not unreasonable; and reference is hereby made to said report for further particulars. On said date, January 18, 1922, the rate on sugar from the points of origin of the plaintiffs' shipments to Globe, Arizona, was $1.59 per hundred pounds; the corresponding rate on sugar from said points of origin to Safford, Arizona, was $1.29 per hundred pounds; both said points, Globe and Safford, being located upon said Globe Division, heretofore referred to. The direct short-line routes of movement from the California points of origin of the plaintiffs' shipments to Globe and Safford, were at all times during the period of movement of the plaintiffs' shipments, identical with the routes of movement from said points of origin to Tucson, as far as and including Tucson itself. At all said times the distances from said points of origin to Globe and Safford were, respectively, 237 miles, and 153 miles, greater than to Tucson.

16. The rates and charges assessed and collected upon the plaintiffs' said shipments, as set forth upon the aforesaid Rule V statements were, and each of them was, just and reasonable,

and in full conformity with the Interstate Commerce Act, and were, and each of them was, lawfully applied, assessed and collected by the said defendants.

which requests were severally denied by the Court, and the Court refused to find such facts as so requested, and defendants, by their counsel, then and there duly excepted to each and all of said rulings [247] of the Court in failing to find such facts as so requested by them.

Defendants further did then and there, by their counsel, request the Court by written instrument and also orally in open court, to make the following conclusions of law, to-wit: (Paragraphs are numbered according to the written Special Conclusions of Law requested by defendants and on file in this cause):

1. The rates and charges assessed and collected upon plaintiffs' said shipments of sugar, as shown and set forth in said Rule V statements annexed to the complaints herein, were published, applied and collected by authority of the Interstate Commerce Commission, and had previously been declared by said Commission to be not unreasonable, after full formal investigation, and/or were less in amount than rates which had previously been declared by said Commission to be reasonable after such investigation, subject only to intervening modifications authorized and/or required by the United States, acting through the Director-Gen-

eral, as the Agent of the President, and/or the Interstate Commerce Commission.

2. Said orders of said Interstate Commerce Commission, dated September 7, 1929, and April 13, 1930, and purporting to direct and require said defendants to pay reparation to the plaintiffs with respect to their said shipments shown on said Rule V statements, are in excess of the lawful jurisdiction of said Commission, and therefore were and are null and void and of no effect.

3. Plaintiffs have failed to establish by the evidence any cause of action whatever against the defendants or either or any of them; and have failed to establish that any unreasonable or otherwise unlawful rate or charge was collected upon any of said shipments, or that any reparation whatsoever is due or payable with respect to said [248] shipments or any of them.

4. Plaintiffs are not entitled to recover any amount whatsoever as fees of their attorneys and counsel in said causes; defendants are entitled to judgment against the plaintiffs, that the plaintiffs take nothing by their actions, and that their complaints herein be dismissed.

which requests were severally denied by the Court, and such conclusions were refused; and the defendants, by their counsel, then and there duly excepted to each and all of said rulings of the Court in failing to make such conclusions of law, and in denying such requests.

Defendants by their counsel then and there duly excepted to the rulings of the Court in failing to render and enter judgments in favor of the defendants and against the plaintiffs, predicated upon the findings of fact and conclusions of law proposed and requested by defendants.

Thereupon, the Court did then and there, in open court, make the following findings of fact and conclusions of law, and pursuant to stipulation of the parties, incorporated therein by reference Exhibit "B" attached to plaintiffs' complaint in cause No. L-738-Phoenix, and Exhibit "A" attached to plaintiff's complaint in cause No. L-844-Phoenix, being the so-called "Rule V statements" showing shipments made to and received by said plaintiffs upon which reparation was claimed; which said findings and conclusions were afterwards reduced to writing and filed by said Court in the following words and form, to-wit:

[Title of Court and Causes.]

No. L-738-Phoenix; No. L-844-Phoenix.

FINDINGS OF FACT AND CONCLUSIONS OF LAW.

These causes came on regularly for trial and were, by oral stipulation of the parties duly expressed in open court, and pursuant to order of court then and there made, [249] consolidated for purposes of trial and decision, and were jointly tried upon a consolidated record, by the court sitting without a jury, on the 11th day of

October, 1932, a trial by jury having been duly waived by written stipulations of the parties. The parties offered both oral and documentary evidence in support of their respective pleadings herein; and pursuant to stipulation, the parties subsequently, on the 17th day of January, 1933, offered certain oral testimony with respect to the matter of the fees to be allowed plaintiffs' attorneys and counsel; and the Court was duly requested to make, enter and file special findings of fact and conclusions of law prior to rendering judgment. The Court does hereby make and file the following as its special findings and conclusions of law:

FINDINGS OF FACT.

I.

Plaintiffs, F. J. Baffert and A. S. Leon now are, and at all times herein mentioned have been, copartners doing business in the State of Arizona under the firm name of Baffert and Leon.

Plaintiff Wheeler-Perry Company now is, and at all times herein mentioned was, a corporation organized and existing under the laws of the State of Arizona, and qualified to do business in said state.

II.

Defendants now are, and at all times herein mentioned have been, corporations duly organized and existing as such, and engaged in the

operation of lines of railroad pursuant to authority of law as common carriers for hire, and in the transportation of property by means of their said lines of railroad, and in conjunction with connecting [250] carriers in interstate commerce, from points in California to points in Arizona.

III.

Heretofore, and at various dates between the 27th day of February, 1923, and the 1st day of May, 1928, plaintiffs shipped, or caused to be shipped, from San Francisco, Crockett, Oxnard and Betteravia, California, to Tucson, Arizona, over the lines of said defendants, certain carload shipments of sugar. There are annexed to the complaints on file herein tabulated statements (hereinafter referred to as "Rule V" statements) which correctly show in detail, among other things, the dates upon which said shipments were made, the dates upon which the transportation charges thereon were collected, the initials and numbers of the cars in which the same were transported, the names of the parties to whom such shipments were consigned and delivered, the routes over which said shipments moved, the several weights of said shipments, the rates thereon asssed and the charges thereon collected (said rates and charges being shown under the columns collectively headed "As Charged" upon said statements), the rates

subsequently found by the Interstate Commerce Commission to have been reasonable, and the amounts which would have accrued as charges under said last mentioned rates (said rates and amounts being shown under the columns collectively headed "Should Be" upon said statements), and the amount of reparation claimed by the plaintiffs and allowed by said Commission with respect to each of said shipments. The Rule V statement showing the shipments consigned to and received by plaintiffs Baffert and Leon, as to which reparation is claimed by said plaintiffs, is attached as Exhibit "B" to the com- [251] plaint on file in Cause No. L-738-Phoenix. The Rule V statement showing the shipments consigned to and received by plaintiff Wheeler-Perry Company, as to which reparation is claimed by said plaintiff, is attached as Exhibit "A" to the complaint on file in Cause No. L-844-Phoenix. Reference is hereby made to said Rule V statements for further particulars, the same as if said statements were physically a part hereof.

IV.

On or about February 6, 1926, plaintiffs Baffert and Leon filed a complaint with the Interstate Commerce Commission, in which it was alleged, among other things, that the rates maintained, assessed and collected by defendants and other common carriers for the transportation of sugar in carloads from various specified

points in California, including the points of origin of said plaintiffs' shipments hereinbefore mentioned, to Tucson, Arizona, were and in future would be unreasonable in violation of Section 1 of the Interstate Commerce Act. Following the filing of said complaint said Commission caused the same to be assigned Docket No. 17549, Sub-No. 1. Thereafter, and in regular course, the defendants named in said complaint filed their answers thereto with said Commission, in which said answers said defendants denied in particular that said rates had been or were unreasonable, or otherwise in violation of the Interstate Commerce Act as alleged, or that said plaintiffs had been or would be damaged thereby.

On or prior to March 6, 1925, plaintiff Wheeler-Perry Company filed a complaint with said Commission, in which it was alleged, among other things, that the rates maintained, assessed and collected by defendants and other common carriers for the transportation of sugar in carloads from [252] various specified points in California, including the points of origin of said plaintiff's shipments hereinbefore mentioned, to Tucson, Arizona, were and in future would be unreasonable, in violation of Section 1 of the Interstate Commerce Act. Following the filing of said complaint said Commission caused the same to be assigned Docket No. 16770, Sub-No. 2. Thereafter, and in regular course, the defendants named in said complaint filed their answers

thereto with said Commission, in which said answers said defendants denied in particular that said rates had been or were unreasonable, or otherwise in violation of the Interstate Commerce Act as alleged, or that said plaintiff had been or would be damaged thereby.

V.

That the Interstate Commerce Commission on March 12, 1928, made and rendered its opinion and order, reported in volume 140 of Interstate Commerce Commission Reports, at page 171 and following, and finding that the rates on sugar in carloads from Betteravia and Oxnard, California, had in the past been unreasonable to the extent that they exceeded a rate and charge of 75¢ per 100 pounds on and after July 1, 1922, and from Crockett and San Francisco, California, had in the past been unreasonable to the extent that they exceeded a rate and charge of 77¢ per 100 pounds on and after July 1, 1922, and that certain of the plaintiffs in said proceedings (including plaintiffs herein) had made shipments at the rates found in said proceeding to have been unreasonable; that they had paid and borne the charges thereon, and were damaged thereby in the amount of the difference between the charges paid and those which would have accrued at the rates found in said proceedings to have been reasonable; and that said complainants (in- [253] cluding plaintiffs herein) were entitled to reparation, with interest. Said

list of shipments set forth as Exhibit "B" in the complaint on file in cause No. L-738-Phoenix and Exhibit "A" in the complaint on file in cause No. L-844-Phoenix, show in detail, as previously stated, the charges actually assessed upon plaintiff's shipments involved in these causes, and the charges which would have accrued thereon upon the basis of the rates declared by said Commission in said abovementioned report and order to have been the reasonable rates to have been applied at said dates of movement, together with the difference between the charges so assessed and those which would have accrued, which said last mentioned differences constitute the amounts herein claimed by the plaintiffs, exclusive of interest and fees of its attorneys and counsel.

VI.

That said freight charges assessed the respective plaintiffs in the above entitled causes on the list of shipments set forth in said Rule V statements hereinabove referred to, same being the shipments involved in these causes, were and are unreasonable as to the plaintiffs and in violation of the Interstate Commerce Commission Act of February 4, 1887, and acts of Congress amendatory thereto.

VII.

That the just and reasonable rates which should have been changed on all of said ship-

ments listed in said Rule V statements above referred to from Betteravia and Oxnard, California, to said points of destination in Arizona after the 1st day of July, 1922, was 73¢ per 100 pounds, and from Crockett and San Francisco, California, to said point of destination in Arizona after the 1st day of July, 1922, [254] was 77¢ per 100 pounds.

VIII.

That the plaintiffs did duly comply with all of the requirements of the Interstate Commerce Commission as to the proof necessary for the amount of said reparations.

IX.

(1) That on the 7th day of September, 1929, said Interstate Commerce Commission, in Docket No. 16742 and causes consolidated therewith, including Docket No. 17549 (Sub-No. 1) duly made and passed its order directing and requiring the defendant Southern Pacific Company to pay to the plaintiffs F. J. Baffert and A. S. Leon, copartners, trading under the firm name of Baffert and Leon (being plaintiff in cause No. L-738-Phoenix, above referred to), the sum of $726.28, together with interest thereon at the rate of six percent (6%) per annum from the respective dates of payment of the charges collected by the defendant from said plaintiffs, said sum to be paid on or before the 22nd day of October, 1929; said sum being the amount of reparation on account of said unrea-

sonable rates charged and collected by said defendant for transportation of said 18 car load shipments of sugar.

(2) That heretofore and on the 13th day of April, 1931, the Interstate Commerce Commission duly made and rendered its Supplemental Order in Docket No. 16742 and causes consolidated therewith, including said Docket No. 16770 (subdivision No. 2), ordering and directing the defendants to pay unto the plaintiff Wheeler-Perry Company (being plaintiff in cause No. L-844-Phoenix above referred to) the following sums, to-wit:

Santa Maria Valley Railroad Company	$ 81.60
Southern Pacific Company	1090.09
	$1171.69

[255]

together with interest thereon at the rate of six percent (6%) per annum from the respective dates of the payment of the charges as shown on said list of shipments above referred to and specifically set forth on Exhibit "A" attached to said plaintiff's complaint filed in this cause.

Said last mentioned Order required the payment of said sums on or before the 28th day of May, 1931; and that the same were as reparation on account of the unreasonable rates charged for the transportation of certain carload shipments of sugar from points in California to points in Arizona (including Tucson, Arizona).

(3) Said defendants have failed and refused to comply with any or all of said Orders, or to pay said sums or any part thereof, to any of said plaintiffs, although demand and request therefor have heretofore been duly made by all of said plaintiffs upon said defendants.

X.

That by reason of said unreasonable rates, charges and payments thereof by the respective plaintiffs, and by reason of the refusal of the defendants to pay said reparations so ordered by the Interstate Commerce Commission, the plaintiffs have been damaged as follows, to-wit:

(1) F. J. Baffert and A. S. Leon, co-partners, trading under the firm name of Baffert and Leon (being plaintiffs in cause No. L-738-Phoenix), $726.28, together with interest thereon at the rate of six per cent (6%) per annum from the respective dates of payment on the charges collected by the defendant Southern Pacific Company down to and including the date hereof amounting to the sum of $344.37, making a total sum of principal and interest of $1,070.65.

(2) Wheeler-Perry Company (being plaintiff in cause No. L-844-Phoenix) by the defendants Southern Pacific Com- [256] pany and Santa Maria Valley Railroad Company in the sum of $81.60, and by the defendant Southern Pacific Company in the sum of $1090.09, together with interest on all of said amounts at the rate of six per cent (6%) per annum from

the respective dates of payment as shown on Exhibit "A" attached to said plaintiff's complaint.

XI.

That the plaintiffs were required to employ attorneys at law to prosecute the present actions in order to effect collection of said reparations, and that twenty per cent (20%) of the total respective amounts due, including interest and principal, in each of said causes, is reasonable as attorneys fees.

CONCLUSIONS OF LAW.

Based upon the foregoing findings of fact, the court finds as conclusions of law as follows:

I.

That the said order of the Interstate Commerce Commission dated September 7, 1929 (being the Order relied upon by plaintiffs in cause No. L-738-Phoenix above referred to) and the Order of the Interstate Commerce Commission dated April 13, 1931 (being the Order relied upon by plaintiff in cause No. L-844-Phoenix above referred to), both of which said orders were made and entered in that certain proceeding before said Commission entitled "Traffic Bureau of Phoenix Chamber of Commerce, et al. v. Atchison, Topeka and Santa Fe Railway Company, et al", docketed as No. 16742, and causes consolidated therewith (including Docket No. 17549, Sub-No. 1, and

Docket No. 16770, which said order required said defendants to pay the various plaintiffs herein certain sums of money as set forth in said orders and in the respective plaintiffs' complaints, [257] were and are legal, valid and binding orders, and were made and ordered by said Interstate Commerce Commission in said cause, and were within the power and jurisdiction conferred upon said Interstate Commerce Commission by law, and that in the making of said orders the said Interstate Commerce Commission acted within its jurisdiction and power.

II.

That the following rates charged the various plaintiffs by the defendants, to-wit:

For a shipment made on September 14, 1923, from Betteravia, California, 86½¢ per 100 pounds;

For a shipment made on October 13, 1923, as shown on Exhibit "A" attached to plaintiff's complaint in cause No. L-844-Phoenix, and made a part thereof, 86½¢ per 100 pounds;

For a shipment made on April 28, 1928, as shown on Exhibit "A" attached to plaintiff's complaint in cause No. L-844-Phoenix, and made a part thereof, 75¢ per 100 pounds;

For shipments made between February 27, 1923 and December 28, 1932, inclusive,

from Crockett and San Francisco, California, 86½¢ per 100 pounds;

For shipments made between January 24, 1924, and September 10, 1925, inclusive, from Crockett and San Francisco, California, 84¢ per 100 pounds;

on carload shipments of sugar, all as shown on the Rule V Statements hereinabove referred to and attached to plaintiff's complaint of the respective plaintiffs herein, were, as found by the Interstate Commerce Commission in said proceedings known as Docket No. 16742, unreasonable to the extent that they exceeded 73¢ per 100 pounds from Better- [258] avia and Oxnard, California, and 77¢ per 100 pounds from Crockett and San Francisco, California, to Tucson, Arizona, during the periods hereinabove set forth; and that the reasonable rates which should have been charged the plaintiffs on account of said shipments over defendant's lines during said periods were 73¢ per 100 pounds from Betteravia and Oxnard, California, and 77¢ per 100 pounds from Crockett and San Francisco, California, to Tucson, Arizona.

III.

(1) That by reason of said unreasonable charges the plaintiffs Baffert and Leon (Being plaintiffs in cause No. L-738-Phoenix) have been damaged, and the defendant Southern Pacific Company is indebted to said plaintiffs in

the sum of $726.28, together with interest thereon at the rate of six per cent (6%) per annum from the respective dates of payment of said charges, as shown on said Exhibit "B" attached to plaintiffs' complaint down to and including the date hereof, amounting to the sum of $344.37, making a total sum of $1,070.65, and the further sum of 20% of said indebtedness, including principal and interest as and for attorney's fees, amounting to the sum of $214.13, together with plaintiffs' costs and disbursements herein expended, and that said plaintiffs are entitled to judgment therefor;

(2) That by reason of said unreasonable charges the plaintiff Wheeler-Perry Company (being plaintiff in cause No. L-844-Phoenix) has been damaged, and the defendants Southern Pacific Company and Santa Maria Valley Railroad Company, are indebted to the said plaintiff in the sum of $81.60, together with interest at the rate of six per cent (6%) per annum from the respective dates of payment of the [259] charges as shown on the list of shipments set forth in Exhibit "A" attached to said plaintiff's complaint, said interest amounting to the sum of $46.74, as of this date, and attorney's fees of twenty per cent (20%) of the total amount of said indebtedness, including principal and interest, said attorney's fees amounting to the sum of $25.68; and the defendant, Southern Pacific Company, is indebted to the said plaintiff in the

sum of $1090.09, together with interest at the rate of six per cent (6%) per annum from the respective dates of payment of the charges as shown on the list of shipments set forth in Exhibit "A", attached to said plaintiff's complaint, said interest amounting to the sum of $581.48, as of this date, and attorneys' fees of twenty per cent (20%) of the total amount of said indebtedness, including principal and interest, said attorneys' fees amounting to the sum of $359.98; together with other lawful costs incurred by said plaintiff in said action; and that the said plaintiff is entitled to judgment therefor.

Dated this 9th day of June, 1933.

F. C. JACOBS, Judge.

Thereupon, defendants did by their counsel in open court duly except to the findings of fact and conclusions of law of the Court in the following particulars, to-wit:

Defendants excepted to paragraph V of the Court's findings of fact, on the ground that the same was and is not sufficiently clear and definite, and upon the further ground that the same was and is not sustained or supported by the evidence, nor in accord with the evidence and the law.

Defendants excepted to paragraph VI of the Court's findings of fact, on the ground that the same was and is not sufficiently clear and definite, and was and is not sustained or supported by the evi- [260] dence, nor in accord with the evidence and the law.

Defendants excepted to paragraph VII of the Court's findings of fact for the reason that the same was and is not sustained or supported by the evidence, and was and is contrary to the evidence and the law, and was and is not sufficiently clear and definite.

Defendants excepted to paragraph VIII of the Court's findings of fact on the ground that the same was and is not sustained or supported by the evidence, and is contrary to the evidence and the law, and upon the further ground that the same was and is not sufficiently clear, definite and concise.

Defendants excepted to paragraph IX of the Court's findings of fact upon the ground that the same was and is not sustained or supported by the evidence, and was and is wholly contrary to the evidence and the law, and upon the further ground that the same was and is not sufficiently clear, definite and concise.

Defendants excepted to paragraph X of the Court's findings of fact upon the ground that the same was and is not sustained or supported by the evidence, and was and is wholly contrary to the evidence and the law.

Defendants excepted to paragraph XI of the Court's findings of fact on the ground that the same was and is not sustained or supported by the evidence, and was and is wholly contrary to the evidence and the law.

Defendants excepted to paragraph I of the Court's conclusions of law upon the ground that the

same was and is not sustained or supported by the evidence, and was and is wholly contrary to the evidence and the law.

Defendants excepted to paragraph II of the Court's conclusions of law upon the ground that the same was and is not sustained or supported by the evidence, and was and is wholly contrary to the evidence and the law, and upon the further ground that the same was and is not sufficiently clear, definite and certain. [261]

Defendants excepted to paragraph III of the Court's conclusions of law upon the ground that the same was and is not sustained or supported by the evidence, and was and is wholly contrary to the evidence and the law, and upon the further ground that the same was and is not sufficiently clear and definite.

Thereafter, and on the 9th day of June, 1933, the Court's written findings of fact and conclusions of law as aforesaid were filed in said causes; and thereupon, and on said 9th day of June, 1933, the Court, upon motion of plaintiffs' attorneys in cause No. L-738-Phoenix, ordered judgment to be rendered and entered in said cause in favor of said plaintiffs and against the defendants, which said judgment was and is in words and figures as follows:

[Title of Court and Cause.]
No. L-738-Phoenix.

This cause having come on regularly to be heard on the 12th day of October, 1932, Samuel

White appearing as counsel for the Plaintiffs, F. J. Baffert and A. S. Leon, and Messrs. Baker & Whitney, Chalmers, Fennemore & Nairn, James E. Lyons & Burton Mason, having appeared as counsel for the defendant, the Southern Pacific Company; and it having appeared that a stipulation containing an express waiver of the right to trial by jury had been signed by all the parties and filed herein; and evidence, both oral and documentary, having been introduced by the parties hereto; and both sides having rested, and said cause having been argued on behalf of the plaintiffs and on behalf of the defendant; and the court having requested the plaintiffs and defendant to file briefs on the matters and questions involved; and said cause having been submitted to the court for its consideration and decision;

And on the 17th day of January, 1933, the court having heard evidence and testimony as to the reasonableness of [262] attorneys' fees to be allowed the plaintiffs herein for the services rendered herein by their attorney in the trial and determination hereof to the date of this judgment as provided by law;

Findings of Fact and Conclusions of Law having been filed by the court herein, as required by the parties hereto, and the court having ordered that, in accordance with said Findings of Fact and Conclusions of Law, judgment be entered in favor of the plaintiffs and against

the defendant in said cause, filed herein, together with twenty per cent (20%) of the total indebtedness, including principal and interest, as and for attorney's fees, and plaintiffs' costs incurred herein;

NOW, THEREFORE, by virtue of the law and by reason of the premises, aforesaid;

It is ORDERED, ADJUDGED and DECREED, that the Southern Pacific Company, a corporation, is indebted to the plaintiffs in the principal sum of Seven Hundred Twenty-six and 28/100 ($726.28) Dollars, together with interest thereon at the rate of six per cent per annum from the respective dates of payment of said charges, as shown on Exhibit "B", attached to plaintiff's complaint, up to and including the date hereof, amounting to the sum of $334.37, making a total indebtedness of $1,070.65, together with 20% of said total sum, including principal and interest, as and for attorney's fees, amounting to the sum of $214.13;

It is further ORDERED, ADJUDGED and DECREED, that the plaintiff is entitled to the sum of $15.90 taxed and allowed as its costs, exclusive of attorney's fees, which is due and owing the plaintiff by said defendant;

It is further ORDERED, that all the above amounts bear interest at the rate of six per cent per annum.

DONE AND DATED this 9th day of June, 1933. [263]

Defendants, by their counsel, then and there duly excepted to said order for judgment, and to said judgment of the Court, and to every part and portion thereof. On said date last mentioned the Court, upon motion of plaintiff's attorneys in cause No. L-844-Phoenix, ordered judgment to be rendered and entered in said cause in favor of the plaintiff therein and against defendants, which said judgment was and is in words and figures as follows:

[Title of Court and Cause.]
No. L-844-Phoenix.

This cause having come on regularly to be heard the 11th day of October, 1932, Elliott and Snell having appeared as counsel for the plaintiff, and Baker and Whitney, Chalmers, Fennemore and Nairn, James E. Lyons, Burton Mason, and Gerald E. Duffy, having appeared as counsel for the defendants; and it having appeared that a Stipulation containing an express waiver of the right to trial by jury had been signed by all of the parties and filed herein; and the respective parties having offered both oral and documentary evidence in support of their respective pleadings herein;

And the trial of said matter having been concluded on the 13th day of October, 1932; and both sides having rested; and said cause having been argued on behalf of the plaintiff and on behalf of the defendants; and the court having requested the plaintiff and the defendants to file authorities on the matters and questions in-

volved; and said cause having been submitted to the court for its consideration and decision;

And on the 17th day of January, 1933, the court having heard evidence and testimony as to the reasonableness of attorneys fees to be allowed the plaintiff herein for the services rendered by its attorneys in the trial and [264] determination hereof to the date of this judgment, as provided by law;

And on the 9th day of June, 1933, Findings of Fact and Conclusions of Law having been filed by the court herein as requested by the parties hereto, and the court having ordered that in accordance with said Findings of Fact and Conclusions of Law, judgment be entered in favor of the plaintiff and against the defendants, and each of them, in said cause filed herein, together with costs of plaintiff incurred herein;

NOW THEREFORE, by virtue of the law and by reason of the premises aforesaid:

It is Ordered, Adjudged and Decreed, that the defendant Santa Maria Valley Railroad Company is indebted to the plaintiff in the principal sum of $81.60, together with interest thereon in the amount of $46.74, together with the sum of $25.68 which is adjudged by the court to be reasonable attorneys fees to be allowed the plaintiff for services rendered by its attorneys in this matter up to the date of this judgment, as provided by law; and

It is further Ordered, Adjudged and Decreed that the defendant Southern Pacific Company

is indebted to the plaintiff in the principal sum of $1090.09, together with interest thereon in the amount of $581.48, together with the sum of $359.98 which is adjudged by the court to be reasonable attorneys fees to be allowed the plaintiff for services rendered by its attorneys in this matter up to the date of this judgment, as provided by law; and

It is further Ordered, Adjudged and Decreed that said defendants, and each of them, are indebted to the plaintiff in the sum of $12.00, same being plaintiff's costs herein taxed, exclusive of attorneys fees; and [265]

It is Further Ordered, Adjudged and Decreed that all of the above amounts shall bear interest at the rate of six percent (6%) per annum until paid.

Dated this 9th day of June, 1933.

Defendants, by their counsel, then and there duly excepted to said order for judgment, and to said judgment of the Court, and to every part and portion thereof.

Thereafter, and on or about the 10th day of June, 1933, plaintiffs in cause No. L-738-Phoenix, by their counsel, filed and served a statement of costs and disbursements, together with a notice of the time and place of application to tax costs, in which said statement said plaintiffs claimed, as items of costs to be taxed and allowed by the Court herein, the sum of $222.82 as reasonable fees of their attorneys and counsel, and the sum of $3.90 as expense of

securing from the Interstate Commerce Commission certified copies of Rule V statements, report and findings, and order for reparation. On or about said 10th day of June, 1933, plaintiff in cause No. L-844-Phoenix, by its counsel, filed and served a statement of costs and disbursements, together with a notice of time and place of application to tax costs; and in said statement said plaintiff claimed, as an item of costs to be taxed and allowed by the Court herein, the sum of $359.98 as reasonable fees of its attorneys and counsel to be collected from defendant Southern Pacific Company, and the sum of $25.68 as reasonable fees of its attorneys and counsel to be collected from defendants Southern Pacific Company and Santa Maria Valley Railroad Company.

Thereafter, and on the 19th day of June, 1933, the Clerk of said Court heard defendants' objections to the aforesaid items of costs and disbursements, and defendants then and there presented their oral and written objections to the aforesaid items of attorneys' fees and of the expense of securing said certified copies of Rule V statements and other documents from said Commission; and the [266] Clerk of said Court, and the Judge thereof, over said objections of defendants, then and there allow said items as proper items of costs; to which said ruling and order defendants then and there duly excepted.

Thereafter, pursuant to stipulation of the parties dated July 8, 1933, the Court entered an order as of June 8, 1933, correcting the judgment theretofore rendered and entered in Cause No. L-844-Phoenix,

so as to provide that the amount of the attorneys' fees recoverable from defendant Southrn Pacific Company should be $334.31, instead of $359.98.

Within the time allowed by law, as extended by stipulation of the parties, and by order of the Court, this Bill of Exceptions was served on counsel for the plaintiffs and was filed herein.

It is hereby certified that the foregoing Bill of Exceptions tendered by the defendants is complete and correct in every particular, and contains all of the evidence and testimony offered and/or admitted upon proceedings had at any and all hearings in the above entitled causes, together with all of the rulings of the Court in said proceedings, and all of the exceptions allowed; and

Said Bill of Exceptions is hereby certified, settled, and signed as correct in all respects and presented in due time this 9th day of October, 1933.

F. C. JACOBS,
United States District Judge. [267]

STIPULATION

IT IS HEREBY STIPULATED, by and between counsel for the parties to the above-entitled causes, that the foregoing Bill of Exceptions, as tendered to the Court by defendants, was presented in time, and is true and correct, and has been duly served upon the plaintiffs; and that the same may

be settled, allowed, certified and signed by the Court without amendment.

Dated at Phoenix, Arizona, this 5th day of October, 1933.

FRANK L. SNELL, JR.
SAMUEL WHITE
Counsel for Plaintiffs.
BAKER & WHITNEY
CHALMERS, FENNEMORE & NAIRN
JAMES E. LYONS
GERALD E. DUFFY
BURTON MASON
Counsel for Defendants.

[Endorsed]: Filed Oct. 9, 1933. [268]

[Title of Court and Cause—Consolidated Cases.]

MINUTE ENTRY OF MONDAY, OCTOBER 9, 1933

Defendants' Bill of Exceptions is now presented to the Court by Alexander B. Baker, Esquire, of counsel for said Defendants, and upon stipulation of respective counsel on file herein,

IT IS ORDERED that said Defendants' Bill of Exceptions be, and the same is hereby settled and allowed. [269]

[Title of Court and Cause—No. L-738-Phx.]

PETITION FOR APPEAL.

Now comes Southern Pacific Company, a corporation, defendant in the above entitled cause, and says that on or about the 9th day of June, 1933, judgment in said cause was rendered by this Court in favor of the plaintiffs, F. J. Baffert and A. S. Leon, co-partners, trading under the firm name of Baffert & Leon, by which said defendant was aggrieved; that in said judgment, and the proceedings had prior and subsequent thereto in said cause, certain errors were committed to the prejudice of said defendant, all of which fully appears in detail from the assignments of error filed with this petition.

WHEREFORE, said defendant Southern Pacific Company, a corporation, hereby prays that an appeal may be allowed to it to the United States Circuit Court of Appeals for the Ninth Circuit for the correction of the errors complained of, and that citation on appeal issue as provided by law; and that a duly authenticated transcript of the record, proceedings and all papers and documents herein may be sent to the United States Circuit Court of Appeals for the Ninth Circuit pursuant to law and the rules of said court in such cases made and provided; and said defendant further prays this Court to fix the amount of the cost and/or supersedeas bond to be given by the defendant in said cause, and that such other and [270] further proceedings may be had as may be proper in the premises.

DATED at Phoenix, Arizona, this 5th day of September, 1933.

BAKER & WHITNEY,
CHALMERS, FENNEMORE & NAIRN,
JAMES E. LYONS,
GERALD E. DUFFY,
BURTON MASON,
Attorneys for Defendant and Appellant.

[Endorsed]: Filed Sep 5 1933. [271]

[Title of Court and Cause—L-844-Phx.]

PETITION FOR APPEAL

Now come Southern Pacific Company, a corporation, and Santa Maria Valley Railroad Company, a corporation, defendants in the above entitled cause, and say that on or about the 9th day of June, 1933, judgment in said cause was rendered by this Court in favor of the plaintiff, Wheeler-Perry Company, a corporation, and against said defendants, Southern Pacific Company and Santa Maria Valley Railroad Company by which said defendants were aggrieved; that in said judgment, and the proceedings had prior and subsequent thereto in said cause, certain errors were committed to the prejudice of said defendants, all of which fully appears in detail from the Assignments of Error filed with this petition.

WHEREFORE, said defendants, Southern Pacific Company, a corporation, and Santa Maria Valley Railroad Company, a corporation, hereby pray that an appeal may be allowed to them to the United States Circuit Court of Appeals for the Ninth Circuit for the correction of the errors complained of, and that citation on appeal issue as provided by law; and that a duly authenticated transcript of the record, proceedings and all papers and documents herein may be sent to the United States Circuit Court of Appeals for the Ninth Circuit, pursuant to law and the rules of said Court in such cases made and provided; and said defendants further pray this Court to [272] fix the amount of the cost and supersedeas bond to be given by the defendants in said cause; and that such other and further proceedings may be had as shall be proper in the premises.

Dated at Phoenix, Arizona, this 5th day of September, 1933.

BAKER & WHITNEY
CHALMERS, FENNEMORE & NAIRN
JAMES E. LYONS
GERALD E. DUFFY
BURTON MASON
Attorneys for Defendants and Appellants.

[Endorsed]: Filed Sep. 5, 1933. [273]

[Title of Court and Cause—Consolidated Cases.]

ASSIGNMENTS OF ERROR.

The defendants in the above entitled causes, Southern Pacific Company, a corporation, and

Santa Maria Valley Railroad Company, a corporation, in connection with their petitions for appeal in said causes, make the following assignments of error, which they aver occurred upon the trial of said cause, or were committed by the Court in the findings of fact, or in the conclusions of law, or in the rendition of judgments, or in other proceedings in said causes:

1.

The Court erred in failing to grant, and in overruling, defendants' motion for the entry of an order for a non-suit against the plaintiffs in each of said causes, and for the entry of orders dismissing the complaints of said plaintiffs, and for judgments against said plaintiffs and in favor of defendants, made at the conclusion of plaintiffs' testimony in chief; for the reason that plaintiffs' said testimony failed to sustain the causes of action alleged in the complaints, or any cause of action against the de- [274] fendants, and showed affirmatively that the orders for reparation, upon which said complaints are based, were and are void and of no effect, because beyond the power and jurisdiction of the Interstate Commerce Commission, in that the rates assessed upon said shipments, against which said Commission has undertaken by means of said orders to award reparation, had previously been approved and/or prescribed as reasonable by said Commission by prior formal findings, and/or were less in amounts than rates so approved or prescribed, as continued in effect throughout the period of move-

ment of plaintiffs' shipments without any change, on the part of the defendant carriers, other than certain voluntary reductions.

2.

The Court erred in failing to sustain, and in overruling defendants' objection to the question, asked of defendants' witness Fielding, on cross-examination by plaintiffs' attorney, as follows: "In attempting to reach reasonable rates for Arizona, has it not been the contention of the carriers that our rates here should be 120 per cent of the Memphis Southwestern rates?", upon the ground that said question was immaterial and irrelevant, and wholly improper cross-examination, having no relation to the issues, or to the testimony of said witness upon his direct-examination.

3.

The Court erred in overruling, and in failing to sustain, defendants' objection to plaintiffs' Exhibit 5, offered through plaintiffs' witness L. G. Reif, testifying in rebuttal, upon the ground that said exhibit was not and is not proper rebuttal, in that the same was not offered in rebuttal of any testimony introduced by defendants in their case in chief, and did not undertake to deal with any testimony offered by defendants' witness, or any showing made in defendants' exhibits. Plaintiffs' Exhibit 5 was and is, in words and figures, as follows: [275]

Plaintiff's Exhibit no. 5.

TO	(a) Average Distance	Rates Charged	FROM SOUTHERN CALIFORNIA GROUP: 1	2 Memphis-South-western Sugar Rates	3 120 Per Cent Memphis-South-western Sugar Rates	4 Rates Prescribed for Reparation Period	5 120 Per Cent Consolidated South-western Sugar Rates	6 Rates Prescribed for Future	FROM NORTHERN CALIFORNIA GROUP: 7 Arbitraries	8 Rates in Column 3 Plus Arbitraries	9 Rates Prescribed for Reparation Period	10 Rates in Column 5 Plus Arbitraries	11 Rates Prescribed for Future
	(Miles)			(Cents)	(Cents)	(Cents)	(Cents)	(Cents)	(Cents)	(Cents)	(Cents)	(Cents)	(Cents)
Group 1-													
Yuma	267			40	48	66	45½	46	20	68	66	65½	66
Group 2-													
Kingman	388			47	56	68	56½	57	12	68	69	68½	69
Group 4-													
Tucson													
Prescott	539			55	66	73	65	65	12	78	77	77	77
Williams													
Flagstaff													
Group 5-													
Winslow													
Bisbee													
Bowie	635			59	71	75	72	72	12	83	84	84	84
Douglas													
Holbrook													
Group 6-													
Safford	674			60	72	77	74½	75	12	84	87	86½	87
Group 7-													
Gallup													
Clifton	752			64	77	79	79	79	10	87	89	89	89
Globe													

SEE ATMENTS

REFERENCES

Column 1 See Rule V Statements (or reparation claims).
2 For rates see 77 I.C.C. 595.
3 Rates shown in 77 I.C.C. 595 plus 20 per cent.
4 140 I.C.C. 180
5 Rates shown in 123 I.C.C. 452, 477 plus 20 per cent.
6 140 I.C.C. 181.
7 Arbitraries added by Commission to the rates from Southern California Groups to make the through rates from Northern California Groups, 140 I.C.C. 181.
8 Memphis-Southwestern sugar rates plus 20 per cent plus arbitraries.
9 140 I.C.C. 180.
10 Consolidated Southwestern sugar rates plus 20 per cent plus arbitraries.
11 140 I.C.C. 181.
(a) See Docket 16742, 140 I.C.C. 171, at 178.

4.

The Court erred in overruling, and in failing to grant, defendants' motion to strike plaintiffs' Exhibit 5 from the record, upon the ground that the same was incompetent, in that it appeared from the admissions of Witness L. G. Reif, through whom the same was offered, that it had not been prepared by said witness or at his direction; and upon the further ground that said exhibit was admittedly predicated upon the assumption of facts not in evidence, and upon assumptions shown to be contrary to the undisputed evidence; and upon the further ground that said exhibit was not proper rebuttal, and not offered in rebuttal of any testimony offered by defendants in their case in chief.

5.

The Court erred in denying, and in failing to grant, defendants' motion, made at the conclusion of the testimony, for the rendition and entry of judgments in favor of defendants, and against the plaintiffs, based upon the pleadings and the evidence, for the reason that said judgments in favor of defendants were and are justified and sustained by all the evidence, and justified and required by the law.

6.

The Court erred in finding and concluding that reasonable sums to be allowed as the fees of plaintiffs' attorneys and counsel, on account of their services rendered in these causes, should be 20 per cent

of the total amounts recovered, and in rendering and entering its order allowing to plaintiffs' attorneys and counsel such fees of 20 per cent of the total amounts recovered; for the reason that the said finding, conclusion and order, and each of them, are not sustained or supported by the evidence, and are contrary to the evidence and the law, particularly in that said amounts so found by the Court to be reasonable as attorneys' fees are so clearly too large, in view of the services rendered, as to amount to an abuse [278] by the Court of its discretion.

7.

The Court erred in refusing to find the following facts, which were requested by defendants, to-wit:

> 5. Thereafter, under date of March 12, 1928, said Commission made and entered its report and order in said Dockets Nos. 16770, Sub-No. 2, and 17549, Sub-No. 1, and associated cases (including a proceeding known as Docket No. 16742) decided concurrently therewith, which said report of the Commission is contained in its official reports: 140 I. C. C., at pp. 171 and following. A true and correct copy of said report and order is annexed to the complaint on file in Cause No. L-738-Phoenix, and marked Exhibit "A". Reference is hereby made to said report for further particulars.

said requested findings being contained in paragraph 5 of defendants' proposed special findings of fact, for the reason that said proposed findings so re-

quested by defendants were conclusively proven by the uncontradicted evidence and were and are material to the issues in these causes.

8.

The Court erred in refusing to find the following facts, which were requested by defendants, to-wit:

> 6. Thereafter, pursuant to said report, and in accordance with Rule V of the Rules of Practice of said Commission, plaintiffs prepared the Rule V statements showing the shipments upon which reparation was claimed, copies of which said Rule V statements are attached to the complaints on file herein, as heretofore set forth.

said requested findings being contained in paragraph 6 of defendants' proposed special findings of fact, for the reason that said proposed findings so requested by defendants were conclusively [279] proven by the uncontradicted evidence and were and are material to the issues in these causes.

9.

The Court erred in refusing to find the following facts, which were requested by defendants, to-wit:

> 7. Thereafter, under date of September 7, 1929, said Commission made and entered its order directing and requiring defendant Southern Pacific Company to pay to plaintiffs Baffert and Leon, on or before October 22, 1929, as

reparation and damages, the amount set opposite the name of said defendant in said order, with interest thereon at the rate of 6 per cent per annum from the respective dates of payment of charges as shown in said Rule V statement annexed as Exhibit "B" to the complaint on file in Cause No. L-738-Phoenix, as heretofore referred to. A copy of said reparation order is annexed as Exhibit "C" to said complaint in Cause No. L-738-Phoenix, and is hereby referred to for further particulars.

Thereafter, under date of April 13th, 1930, said Commission made and entered its order directing and requiring said defendants therein named to pay to plaintiff Wheeler-Perry Company, on or before the 28th day of May, 1930, as reparation and damages, the amounts set opposite their respective names in said order, with interest thereon at the rate of 6 per cent per annum from the respective dates of the payment of charges as shown in said Rule V statement annexed as Exhibit "A" to the complaint in Cause No. L-844-Phoenix, as heretofore referred to. A copy of said reparation order is annexed as Exhibit "B" to the complaint in Cause L-844-Phoenix, and is hereby referred to for further particulars.

said requested findings being contained in paragraph 7 of defend- [280] ants' proposed special findings of fact, for the reason that said proposed findings

so requested by defendants were conclusively proven by the uncontradicted evidence and were and are material to the issues in these causes.

10.

The Court erred in refusing to find the following facts, which were requested by defendants, to-wit:

> 9. Under date of May 25, 1915, in response to a complaint attacking as unreasonable the rates on sugar in carloads from all points in California to all destinations in Arizona (including Tucson) said Commission, after full hearing and investigation, rendered its report and order in a proceeding known and entitled as Docket No. 6806, Ariz. Corp. Comm. v. A. T. & S. F. Ry. Co., et al., 34 I. C. C. 158. Reference is hereby made to said report of said Commission, as set forth in its official reports, for further particulars.
>
> As more fully appears from said report, the complaint in said Docket No. 6806 was filed with the Commission on April 15, 1914. During the pendency of said proceeding the carriers named as defendants therein voluntarily reduced their rates on sugar from all points of origin in California to substantially all destinations in Arizona, including Tucson. Such voluntary reductions included in particular the establishment of rates on sugar, in carloads, from all said points in California to all said destinations in Arizona, subject to a minimum weight of 60,000 pounds

per car, which rates were in all cases less than the rates theretofore applying from and to the same points in connection with a carload minimum weight of 36,000 pounds. In and by its said report in said Docket No. 6806, said Commission duly found, among other things, that the rates on sugar to [281] Tucson, as voluntarily reduced during the pendency of said proceeding, were and in future would be just and reasonable. No order respecting said rates to Tucson was made by said Commission in said Docket No. 6806.

The character and extent of said reductions, and in particular of the reductions in the rates to Tucson, is set forth in said report in said Docket No. 6806.

said requested findings being contained in paragraph 9 of defendants' proposed special findings of fact, for the reason that said proposed findings so requested by defendants were conclusively proven by the uncontradicted evidence and were and are material to the issues in these causes.

11.

The Court erred in refusing to find the following facts, which were requested by defendants, to-wit:

10. In compliance with the Commission's said findings in said Docket No. 6806 the carriers parties to the rates therein involved continued, until and including December 29, 1917,

the rates on sugar in carloads, from the several points in California to the destination in Arizona involved in this cause, which were in effect on said May 25, 1915. Upon said December 29, 1917, possession, control and operation of the railroad properties of the defendants and generally of all other railroad common carriers throughout the United States were assumed by the Director-General of Railroads, as Agent of the President of the United States; and said Director-General continued in such possession, control and operation until and including February 29, 1920. Said rates heretofore last mentioned were continued in effect by said Director-General, from and after said December 29, 1917, until, but not including, June 25, 1918. On June 25, 1918, said Director-General caused said rates [282] to be increased as specified and provided in General Order No. 28, issued by said Director-General pursuant to authority conferred by the Federal Control Act, 40 Stat. L. 456. Upon November 25, 1919, said rates, as modified by the changes made pursuant to said General Order No. 28, were further modified pursuant to and as provided by an order duly issued by said Director-General, styled "Freight Rate Authority No. 8016, dated May 16, 1919". Said order last mentioned, also issued pursuant to authority duly conferred by said Federal Control Act, brought about a general readjustment of rates on sugar throughout the western part of the United States. On February 29, 1920,

said Director-General, by order duly made, further modified said rates heretofore mentioned by canceling the rate from California points to Tucson, then and theretofore in effect, subject to a carload minimum weight of 36,000 pounds. The rate then and theretofore in effect from and to said points, subject to a carload minimum weight of 60,000 pounds, was continued without further modification until, but not including, August 26, 1920.

said requested findings being contained in paragraph 10 of defendants' proposed special findings of fact, for the reason that said proposed findings so requested by defendants were conclusively proven by the uncontradicted evidence and were and are material to the issues in these causes.

12.

The Court erred in refusing to find the following facts, which were requested by defendants, to-wit:

11. On March 1st, 1920, upon the termination of Federal Control, the several defendants and other carriers resumed possession and control of their railroad properties. Said [283] carriers, parties to the rates on sugar from California points to Tucson, maintained from and after said last mentioned date until, but not including, August 26, 1920, said rate on sugar subject to a carload minimum weight of 60,000 pounds which was in effect from and to said

points at the date of termination of Federal control. On said date last mentioned said rate was increased to 96½ cents per hundred pounds, as authorized by the report and order of said Commission in the proceeding entitled Ex Parte 74, Increased Rates 1920, 58 I. C. C. 220, to which report reference is hereby made for further particulars. Said report and order authorized general percentage advances in interstate freight rates throughout the United States.

said requested findings being contained in paragraph 11 of defendants' proposed special findings of fact, for the reason that said proposed findings so requested by defendants were conclusively proven by the uncontradicted evidence and were and are material to the issues in these causes.

13.

The Court erred in refusing to find the following facts, which were requested by defendants, to-wit:

12. Said rate of 96½ cents as made effective August 26, 1920, was voluntarily reduced by said defendants, on July 27, 1921, to 96 cents; and was further voluntarily reduced by said defendants effective July 1st, 1922, to 86½ cents. Said reduction last mentioned was in conformity with the recommendations made by said Commission in its report in a proceeding entitled: Reduced Rates 1922, 68 I. C. C. 676, to which report reference is hereby made for further particulars.

> Said rate of 86½ cents last mentioned was further voluntarily reduced by said defendants on or about January [284] 11, 1924, to 84 cents. Said rate of 84 cents continued in effect until and including October 27, 1925, upon which date the same was reduced to 75 cents, pursuant to the findings and order of said Commission in a proceeding numbered and entitled Docket No. 14140, Solomon-Wickersham Co. v. S. M. V. R. Co., 101 I. C. C. 667, to which report reference is hereby made for further particulars. Said rate of 75 cents remained in effect until, but not including, June 11, 1928, upon which date the same was reduced to 65 cents per hundred pounds from points in southern California, including Betteravia and Oxnard, and advanced to 77 cents per hundred pounds from points in northern California, including San Francisco and Crockett, pursuant to the findings and order of said Commission in said Docket No. 16742, heretofore referred to. Said rates of 86½ cents, 84 cents and 75 cents, which were successively in effect during the period July 1, 1922, to June 10, 1928, both inclusive, were the rates assessed upon plaintiffs' shipments during the period of movement thereof, as shown upon said Rule V statements annexed to the complaints on file herein, and are the rates referred to "As Charged" upon said statements.

said requested findings being contained in paragraph 12 of defendants' proposed special findings of fact,

for the reason that said proposed findings so requested by defendants were conclusively proven by the uncontradicted evidence and were and are material to the issues in these causes.

14.

The Court erred in refusing to find the following facts, which were requested by defendants, to-wit:

> 13. On or about the 22nd day of June, 1921, and after full hearing and investigation, said Commission rendered [285] its report and order in a proceeding entitled Docket No. 11532, Traffic Bureau, Phoenix Chamber of Commerce, et al. v. Director-General, et al., 62 I. C. C. 412 (to which report reference is hereby made for further particulars) wherein and whereby said Commission found, among other things, that the reasonable rate thereafter be applied to the transportation of sugar in carloads, minimum weight 60,000 pounds, from points of origin in California (including the points of origin of the plaintiffs' shipments involved herein) to Phoenix, Arizona, should not exceed 96½ cents per hundred pounds. The usual and customary routes of movement from said points of origin in California to Phoenix, Arizona, were identical with the corresponding routes of movement of shipments from said points to Tucson, Arizona, as far as and including Maricopa, Arizona, a point 35 miles by rail from Phoenix; and the distance over said routes of movement

> from said points of origin in California to Phoenix were at all times, during the period of movement of the plaintiffs' shipments involved herein, 51 miles less than the corresponding distances from said points of origin to Tucson. Said order of said Commission in said proceeding last-mentioned, Docket No. 11532, specified that said rate of 96½ cents should be observed as the reasonable maximum rate from California points to Phoenix until the further order of said Commission; and no further order with respect to said rate was made by said Commission during the period of movement of the plaintiffs' shipments, or until January 6, 1925, effective February 25, 1925. During all of said period, and prior to February 25, 1925, said rate of 96½ cents was, and continued to be, the duly established and conclusive measure of a just and reasonable rate on sugar [286] from the points of origin in California involved herein to Phoenix and related points in Arizona, including Tucson in particular.

said requested findings being contained in paragraph 13 of defendants' proposed special findings of fact, for the reason that said proposed findings so requested by defendants were conclusively proven by the uncontradicted evidence and were and are material to the issues in these causes.

15.

The Court erred in refusing to find the following facts, which were requested by defendants, to-wit:

14. On November 3, 1921, and after full hearing, said Commission rendered its report and order in a proceeding entitled Docket No. 11442, Traffic Bureau, Douglas Chamber of Commerce & Mines v. A. T. & S. F. Ry. Co., et al., 64 I. C. C. 405 (to which report of said Commission reference is hereby made for further particulars), in response to a complaint alleging, among other things, that the rates on sugar in carloads from points in California, including all of the points of origin of plaintiffs' said shipments, to Douglas, Arizona, were unreasonable and otherwise in violation of the Interstate Commerce Act. In said report said Commission found that said rate, which at the date of said complaint was 96½ cents per hundred pounds, was and in future would be not unreasonable. No further findings or order with respect to said rate on sugar to Douglas were made by said Commission, subsequent to the report in said Docket No. 11442, until March 12, 1928, the date of the findings and order in said Docket No. 16742 and associated cases, to which reference has heretofore been made. The direct and customary routes of movement of the shipments of the plaintiffs from points [287] in California to Tucson, Arizona, during all of the period of the movement thereof, were identical with the corresponding routes over which shipments of sugar moved from said points in California to Douglas, Arizona, so far as and including Tuc-

son itself; and the distances from said points of origin in California to Douglas, Arizona, were, during all of said times, 123 miles greater than the corresponding distances from said points of origin to Tucson. During all of the period of movement of the plaintiffs' shipments, said rate of 96½ cents to Douglas, found reasonable by said Commission in its report in said Docket No. 11442, was and continued to be the duly established and conclusive measure of a reasonable rate for the transportation of shipments of sugar from the points of origin of plaintiffs' shipments to Douglas and related destinations in Arizona, including Tucson.

said requested findings being contained in paragraph 14 of defendants' proposed special findings of fact, for the reason that said proposed findings so requested by defendants were conclusively proven by the uncontradicted evidence and were and are material to the issues in these causes.

16.

The Court erred in refusing to find the following facts, which were requested by defendants, to-wit:

15. On June 27, 1923, after full hearing and investigation, and in response to a complaint alleging, among other things, that the rates on sugar, in carloads, from points in California, including the points of origin of plaintiffs' shipments, to destinations in Arizona on the Globe Division of the Arizona Eastern Railroad Company (now the Globe Branch of the South-

ern Pacific Company) were unreasonable and otherwise in violation of the Interstate Commerce Act, said [288] Commission rendered its report and order in a proceeding entitled Docket No. 13139: Graham & Gila Counties Traffic Assn. v. A. E. R. Co., et al., 81 I. C. C. 134. In said report said Commission found and declared that said rates, as in effect on January 18, 1922, were and in future would be not unreasonable; and reference is hereby made to said report for further particulars. On said date, January 18, 1922, the rate on sugar from the points of origin of the plaintiffs' shipments to Globe, Arizona, was $1.59 per hundred pounds; the corresponding rate on sugar from said points of origin to Safford, Arizona, was $1.29 per hundred pounds; both said points, Globe and Safford, being located upon said Globe Division, heretofore referred to. The direct short-line routes of movement from the California points of origin of the plaintiffs' shipments to Globe and Safford, were, at all times during the period of movement of the plaintiffs' shipments, identical with the routes of movement from said points of origin to Tucson, as far as and including Tucson itself. At all said times the distances from said points of origin to Globe and Safford were, respectively, 237 miles, and 153 miles, greater than to Tucson.

said requested findings being contained in paragraph 15 of defendants' proposed special findings of fact,

for the reason that said proposed findings so requested by defendants were conclusively proven by the uncontradicted evidence and were and are material to the issues in these causes.

17.

The Court erred in refusing to find the following facts, which were requested by defendants, to-wit:

> 16. The rates and charges assessed and collected upon the plaintiffs' said shipments, as set forth upon the [289] aforesaid Rule V statements were, and each of them was, just and reasonable, and in full conformity with the Interstate Commerce Act, and were, and each of them was, lawfully applied, assessed and collected by the said defendants.

said requested findings being contained in paragraph 16 of defendants' proposed special findings of fact, for the reason that said proposed findings so requested by defendants were conclusively proven by the uncontradicted evidence and were and are material to the issues in these causes.

18.

The Court erred in finding the following facts, which were requested by plaintiffs, to-wit:

V.

> That the Interstate Commerce Commission on March 12, 1928, made and rendered its opinion and order, reported in volume 140 of Interstate

Commerce Commission Reports, at page 171 and following, and finding that the rates on sugar in carloads from Betteravia and Oxnard, California, had in the past been unreasonable to the extent that they exceeded a rate and charge of 75¢ per 100 pounds on and after July 1, 1922, and from Crockett and San Francisco, California, had in the past been unreasonable to the extent that they exceeded a rate and charge of 77¢ per 100 pounds on and after July 1, 1922, and that certain of the plaintiffs in said proceedings (including plaintiffs herein) had made shipments at the rates found in said proceeding to have been unreasonable; that they had paid and borne the charges thereon, and were damaged thereby in the amount of the difference between the charges paid and those which would have accrued at the rates found in said proceedings to have been reasonable; and that said complainants (in- [290] cluding plaintiffs herein) were entitled to reparation, with interest. Said list of shipments set forth as Exhibit "B" in the complaint on file in cause No. L-738-Phoenix and Exhibit "A" in the complaint on file in cause No. L-844-Phoenix, show in detail, as previously stated, the charges actually assessed upon plaintiff's shipments involved in these causes, and the charges which would have accrued thereon upon the basis of the rates declared by said Commission in said above men-

> tioned report and order to have been the reasonable rates to have been applied at said dates of movement, together with the difference between the charges so assessed and those which would have accrued, which said last mentioned differences constitute the amounts herein claimed by the plaintiffs, exclusive of interest and fees of its attorneys and counsel.

which are contained in paragraph V of findings of fact adopted by the Court, for the reason that the same were and are not sufficiently clear and definite, and were and are not sustained or supported by the evidence, nor in accord with the evidence and the law.

19.

The Court erred in finding the following facts, which were requested by plaintiffs, to-wit:

VI.

> That said freight charges assessed the respective plaintiffs in the above entitled causes on the list of shipments set forth in said Rule V statements hereinabove referred to, same being the shipments involved in these causes, were and are unreasonable as to the plaintiffs and in violation of the Interstate Commerce Commission Act of February 4, 1887, and acts of Congress amendatory thereto.

which are contained in paragraph VI of findings of fact adopted by [291] the Court for the reason that

there is no competent evidence to sustain such findings and the same are not supported by, and are contrary to, the evidence and the law; it having been affirmatively shown, by uncontradicted testimony introduced by defendants, that the charges assessed and collected upon plaintiffs' said shipments were just, reasonable and lawful, and were in fact less in amount than charges which would have accrued under rates which had previously been declared to be just and reasonable by prior valid formal findings of said Interstate Commerce Commission, which rates as so approved had been continued in effect throughout the period of movement of plaintiffs' shipments, subject only to changes authorized and/or required by the United States acting through the Director-General of Railroads and/or said Commission, and to certain incidental voluntary reductions by defendants.

20.

The Court erred in finding the following facts, which were requested by the plaintiffs, to-wit:

VII.

That the just and reasonable rates which should have been charged on all of said shipments listed in said Rule V statements above referred to from Betteravia and Oxnard, California, to said points of destination in Arizona after the 1st day of July, 1922, was 73¢ per 100 pounds, and from Crockett and San Francisco,

> California, to said point of destination in Arizona after the 1st day of July, 1922, was 77¢ per 100 pounds.

which are contained in paragraph VII of findings of fact adopted by the Court, for the reason that the same are not sustained or supported by competent evidence, and are contrary to the evidence and the law, and are not sufficiently clear and definite; there being no competent evidence whatsoever upon which to base such finding. [292]

21.

The Court erred in finding the following facts, which were requested by plaintiffs, to-wit:

VIII.

> That the plaintiffs did duly comply with all of the requirements of the Interstate Commerce Commission as to the proof necessary for the amount of said reparation.

which are contained in paragraph VIII of findings of fact adopted by the Court, for the reason that the same are not sustained or supported by the evidence, and are contrary to the evidence and the law, and for the further reason that the same are not sufficiently clear and definite.

22.

The Court erred in finding the following facts, which were requested by the plaintiffs, to-wit:

IX.

(1) That on the 7th day of September, 1929, said Interstate Commerce Commission, in Docket No. 16742 and causes consolidated therewith, including Docket No. 17549 (Sub-No. 1) duly made and passed its order directing and requiring the defendant Southern Pacific Company to pay to the plaintiffs F. J. Baffert and A. S. Leon, copartners, trading under the firm name of Baffert and Leon (being plaintiff in cause No. L-738-Phoenix, above referred to), the sum of $726.28, together with interest thereon at the rate of six percent (6%) per annum from the respective dates of payment of the charges collected by the defendant from said plaintiffs, said sum to be paid on or before the 22nd day of October, 1929; said sum being the amount of reparation on account of said unreasonable rates charged and collected by said defendant for transportation of said 18 car load shipments of sugar. [293]

(2) That heretofore and on the 13th day of April, 1931, the Interstate Commerce Commission duly made and rendered its Supplemental Order in Docket No. 16742 and causes consolidated therewith, including said Docket No. 16770 (subdivision No. 2), ordering and directing the defendants to pay unto the plaintiff Wheeler-Perry Company (being plaintiff in

cause No. L-844-Phoenix above referred to) the following sums, to-wit:

Santa Maria Valley Railroad Company	$ 81.60
Southern Pacific Company	1090.09
	$1171.69

together with interest thereon at the rate of six percent (6%) per annum from the respective dates of the payment of the charges as shown on said list of shipments above referred to and specifically set forth on Exhibit "A" attached to said plaintiff's complaint filed in this cause.

Said last mentioned order required the payment of said sums on or before the 28th day of May, 1931; and that the same were as reparation on account of the unreasonable rates charged for the transportation of certain carload shipments of sugar from points in California to points in Arizona (including Tucson, Arizona).

which are contained in sub-paragraphs (1) and (2) of paragraph IX of findings of fact adopted by the Court, for the reason that said findings are not sustained or supported by the record or the evidence, and are contrary to the evidence and the law, and for the further reason that the same are not sufficiently clear, definite and concise.

23.

The Court erred in finding the following facts, which were requested by plaintiffs, to-wit: [294]

X.

That by reason of said unreasonable rates, charges and payments thereof by the respective plaintiffs, and by reason of the refusal of the defendants to pay said reparations so ordered by the Interstate Commerce Commission, the plaintiffs have been damaged as follows, to-wit:

(1) F. J. Baffert and A. S. Leon, copartners, trading under the firm name of Baffert and Leon (being plaintiffs in cause No. L-738-Phoenix), $726.28, together with interest thereon at the rate of six percent (6%) per annum from the respective dates of payment on the charges collected by the defendant Southern Pacific Company down to and including the 22nd day of October, 1929, amounting to the sum of $191.95, together with interest at the rate of six percent (6%) per annum on the total sum of principal and interest, to-wit, $918.23, from the 22nd day of October, 1929, until paid;

(2) Wheeler-Perry Company (being plaintiff in cause No. L-844-Phoenix) by the defendant Santa Maria Valley Railroad Company in the sum of $81.60, and by the defendant Southern Pacific Company in the sum of $1090.09, together with interest on all of said amounts at the rate of six percent (6%) per annum from the respective dates of payment as shown on Exhibit "A" attached to said plaintiff's complaint.

which are contained in paragraph X of findings of fact adopted by the Court, for the reason that such

findings are not sustained or supported by the evidence, and are contrary to the evidence and the law, in that there is no competent evidence to show that any unreasonable rates and/or charges were ever collected by defendants from plaintiffs, or paid by plaintiffs, or either of them, to defendants, or any of them, or that any of the defendants have ever [295] refused to pay any reparation properly and lawfully awarded by said Interstate Commerce Commission to plaintiffs, or that plaintiffs have ever been damaged by reason of the collection of the rates and charges referred to in the complaints herein.

24.

The Court erred in finding the following facts, which were requested by the plaintiffs, to-wit:

XI.

> That the plaintiffs were required to employ attorneys at law to prosecute the present actions in order to effect collection of said reparations, and that tweny percent (20%) of the total respective amounts due, including interest and principal, in each of said causes, is reasonable as attorneys fees.

which are contained in paragraph XI of findings of fact adopted by the Court, for the reasons that such findings are not sustained or supported by the evidence and are contrary to the evidence and the law; and for the further reason that the amounts so found by the Court to be reasonable as attorneys'

fees in these causes are so clearly too large, in view of the services renderd, as to amount to an abuse of discretion by the Court.

25.

The Court erred in making the following conclusion of law, which was requested by plaintiffs, to-wit:

I.

That the said order of the Interstate Commerce Commission dated September 7, 1929 (being the Order relied upon by plaintiffs in cause No. L-738-Phoenix above referred to) and the Order of the Interstate Commerce Commission dated April 13, 1931 (being the Order relied upon by plaintiff in cause No. L-844-Phoenix above referred to), both of which said orders were made and entered in that [296] certain proceeding before said Commission entitled "Traffic Bureau of Phoenix Chamber of Commerce, et al, v. Atchison, Topeka and Santa Fe Railway Company, et al", docketed as No. 16742, and causes consolidated therewith (including Docket No. 17549, Sub-No. 1, and Docket No. 16770), which said order required said defendants to pay the various plaintiffs herein certain sums of money as set forth in said orders and in the respective plaintiffs' complaints, were and are legal, valid and binding orders, and were made and ordered by said

> Interstate Commerce Commission in said cause, and were within the power and jurisdiction conferred upon said Interstate Commerce Commission by law, and that in the making of said orders the said Interstate Commerce Commission acted within its jurisdiction and power.

which is contained in paragraph I of the conclusions of law adopted by the Court, for the reason that such conclusion is not sustained or supported by competent evidence, and is contrary to the evidence and the law, in that the evidence shows without conflict that said purported orders of said Commission, dated September 7, 1929, and April 13, 1931, respectively, undertake to require defendants to pay reparation for the collection of rates and charges which were in all respects just, reasonable and lawful, and duly and lawfully published and assessed in conformity with prior valid findings made by said Commission, and were less in amount than rates previously prescribed and/or approved as reasonable by said Commission, which were continued and maintained throughout the period of movement of plaintiffs' shipments, subject only to intervening modifications made by authority of the Director-General of Railroads as Agent of the President of the United States, and/or of said Commission.

26.

The Court erred in making the following conclusion of law, [297] which was requested by plaintiffs, to-wit:

II.

That the following rates charged the various plaintiffs by the defendants, to-wit:

For a shipment made on September 14, 1923, from Betteravia, California, 86½¢ per 100 pounds;

For a shipment made on October 13, 1923, as shown on Exhibit "A" attached to plaintiff's complaint in cause No. L-844-Phoenix, and made a part thereof, 86½¢ per 100 pounds;

For a shipment made on April 28, 1928, as shown on Exhibit "A" attached to plaintiff's complaint in cause No. L-844-Phoenix, and made a part thereof, 75¢ per 100 pounds;

For shipments made between February 27, 1923, and December 28, 1932, inclusive, from Crockett and San Francisco, California, 86½¢ per 100 pounds;

For shipments made between January 24, 1924 and September 10, 1925, inclusive, from Crockett and San Francisco, California, 84¢ per 100 pounds;

on carload shipments of sugar, all as shown on the Rule V statements hereinabove referred to and attached to plaintiff's complaint of the respective plaintiffs herein, were, as found by the Interstate Commerce Commission in said proceedings known as Docket No. 16742, unreasonable to the extent that they exceeded 73¢ per

100 pounds from Betteravia and Oxnard, California, and 77¢ per 100 pounds from Crockett and San Francisco, California, to Tucson, Arizona, during the periods hereinabove set forth; and that the reasonable rates which should have been charged the plaintiffs on account of said shipments over defendant's lines during said periods were 73¢ per 100 pounds from Betteravia and [298] Oxnard, California, and 77¢ per 100 pounds from Crockett and San Francisco, California, to Tucson, Arizona.

which is contained in paragraph II of conclusions of law adopted by the Court, for the reason that such conclusion is not sustained or supported by the evidence and is contrary to the evidence and the law, and for the reasons hereinbefore assigned in connection with Assignments of Error Nos. 19, 23 and 25.

27.

The Court erred in making the following conclusion of law, which was requested by plaintiffs, to-wit:

III.

(1) That by reason of said unreasonable charges the plaintiffs Baffert and Leon (being plaintiffs in cause No. L-738-Phoenix) have been damaged, and the defendant Southern Pacific Company is indebted to the said plaintiffs in the sum of $726.28, together with interest thereon at the rate of six percent (6%) per annum from

the respective dates of payment of said charges, as shown on said Exhibit "B", attached to said plaintiffs' complaint down to and including the 22nd day of October, 1929, amounting to the sum of $191.95, and interest on said total sum of principal and interest, to-wit: $918.23, from said 22nd day of October, 1929, to date, said principal and interest amounting to the sum of $1114.10 as of this date, and the further sum of twenty percent (20%) of the total amount of said indebtedness, including principal and interest, as and for attorney's fees, amounting to the sum of $222.82, and said defendant became and is indebted to the said plaintiffs in said total sum of principal and interest, and attorney's fees of $1336.92, together with said plaintiffs' costs and disbursements herein expended, and that said plaintiffs are entitled [299] to judgment therefor;

(2) That by reason of said unreasonable charges the plaintiff Wheeler-Perry Company (being plaintiff in cause No. L-844-Phoenix) has been damaged, and the defendant Santa Maria Valley Railroad Company is indebted to the said plaintiff in the sum of $81.60 principal, together with interest at the rate of six percent (6%) per annum from the respective dates of payment of the charges as shown on the list of shipments set forth in Exhibit "A" attached to said plaintiff's complaint, said interest amounting to the sum of $46.74 as of this date, and at-

> torneys fees of twenty percent (20%) of the total amount of said indebtedness, including principal and interest, said attorneys fees amounting to the sum of $25.68; and the defendant Southern Pacific Company is indebted to the said plaintiff in the sum of $1090.09, together with interest at the rate of six percent (6%) per annum from the respective dates of payment of the charges as shown on the list of shipments set forth in Exhibit "A" attached to said plaintiff's complaint, said interest amounting to the sum of $581.48 as of this date, and attorneys fees of twenty percent (20%) of the total amount of said indebtedness, including principal and interest, said attorneys fees amounting to the sum of $359.98; together with other lawful costs incurred by said plaintiff in said action; and that the said plaintiff is entitled to judgment therefor.

which is contained in paragraph III of conclusions of law adopted by the Court, for the reason that such conclusion is not sustained or supported by the evidence and is contrary to the evidence and the law, and for the further reason hereinbefore assigned in connection with Assignments of Error Nos. 19, 23, 25 and 26. [300]

28.

The Court erred in failing and refusing to make the following conclusion of law, which was requested by defendants, as paragraph 1 of their requested

conclusions of law, to-wit:

> 1. The rates and charges assessed and collected upon plaintiffs' said shipments of sugar, as shown and set forth in said Rule V statements annexed to the complaints herein, were published, applied and collected by authority of the Interstate Commerce Commission, and had previously been declared by said Commission to be not unreasonable, after full formal investigation, and/or were less in amount than rates which had previously been declared by said Commission to be reasonable after such investigation, subject only to intervening modifications authorized and/or required by the United States, acting through the Director-General, as the Agent of the President, and/or the Interstate Commerce Commission.

for the reason that such conclusion is established by uncontradicted testimony, and conforms to and is justified and required by the evidence and the law, and is material to the issues in these causes.

29.

The Court erred in failing and refusing to make the following conclusion of law, which was requested by defendants, as paragraph 2 of their requested conclusions of law, to-wit:

> 2. Said orders of said Interstate Commerce Commission, dated September 7, 1929, and April 13, 1930, and purporting to direct and require said defendants to pay reparation to the plain-

> tiffs with respect to their said shipments shown on said Rule V statements, are in excess of the lawful jurisdiction of said Commission, and therefore were and are null and void and of no effect.

for the reason that such conclusion is established by uncontra- [301] dicted testimony, and conforms to and is justified and required by the evidence and the law, and is material to the issues in these causes.

30.

The Court erred in failing and refusing to make the following conclusion of law, which was requested by defendants, as paragraph 3 of their requested conclusions of law, to-wit:

> 3. Plaintiffs have failed to establish by the evidence any cause of action whatever against the defendants or either or any of them; and have failed to establish that any unreasonable or otherwise unlawful rate or charge was collected upon any of said shipments, or that any reparation whatsoever is due or payable with respect to said shipments or any of them.

for the reason that such conclusion is established by uncontradicted testimony, and conforms to and is justified and required by the evidence and the law, and is material to the issues in these causes.

31.

The Court erred in failing and refusing to make the following conclusion of law, which was requested

by defendants, as paragraph 4 of their requested conclusions of law, to-wit:

> 4. Plaintiffs are not entitled to recover any amount whatsoever as fees of their attorneys and counsel in said causes; defendants are entitled to judgment against the plaintiffs, that the plaintiffs take nothing by their actions, and that their complaints herein be dismissed.

for the reason that such conclusion is established by uncontradicted testimony, and conforms to and is justified and required by the evidence and the law, and is material to the issues in these causes.

32.

The Court erred in failing to render and enter judgments in favor of defendants, and against the plaintiffs, predicated upon the [302] findings of fact and conclusions of law proposed and requested by defendants, for the reason that such findings and conclusions were justified and required by all the evidence and the law, and such judgments in favor of defendants are therefore justified and required by the evidence and the law; and for the further reason hereinbefore assigned, particularly in connection with Assignments of Error Nos. 8 to 17, inclusive, and 28 to 31, inclusive.

33.

The Court erred in rendering and ordering judgments, upon the facts found, in favor of plaintiffs and against defendants, and in refusing to render

and enter such judgments in favor of defendants, for the reason that the facts as found by the Court are not sufficient to support such judgments in favor of plaintiffs; in that such judgments are based solely upon the theory that the interstate Commerce Commission, on September 7, 1929, and on April 13th, 1931, made and issued lawful, valid and binding orders authorizing and directing said defendants to pay to said plaintiffs, in accordance with the terms of said purported orders, certain sums as reparation for the collection of alleged unreasonable rates and charges upon carload shipments of sugar which moved from points in California to Tucson, Arizona, during the period from February 27, 1923, to May 1, 1928, both inclusive, whereas, the uncontradicted testimony shows that the rates and charges assessed and collected by said defendants for the transportation of said shipments were in all respects just, reasonable and lawful, and were published, applied and collected by defendants under authority of said Commission, and had previously been approved and declared by said Commission to be reasonable, after full formal investigation, and/or were less in amount than rates which had previously been approved and declared to be just and reasonable by said Commission, after such investigation, subject only to intervening modifications authorized and/or required by the United States, acting through the Director- [303] General as the Agent of the President, and/or said Commission; and said orders of said Commission purporting to award such reparation to plaintiffs are

therefore void and of no effect, because in excess of the jurisdiction conferred by law upon said Commission.

WHEREFORE, defendants pray that the judgments in the District Court in the above entitled causes may be reversed.

BAKER & WHITNEY,
JAMES E. LYONS,
BURTON MASON,
Attorneys for Defendants.

[Endorsed]: Filed Sep 5 1933. [304]

[Title of Court and Cause No. L-738-Phx.]

ORDER ALLOWING APPEAL AND FIXING AMOUNT OF COST AND/OR SUPERSEDEAS BOND.

On the 5th day of September, 1933, the above entitled defendant, by its attorneys, filed herein and presented to this Court its petition for the allowance of an appeal in said cause, together with Assignments of Error intended to be urged by it, praying also that a duly authenticated transcript of the record, proceedings and all papers and documents upon which the judgment herein was rendered, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit, and that citation issue; and further praying that this Court fix the amount of the cost and/or supersedeas bond to be given by said defendant in this cause; and that such other and further proceedings be had as may be proper in the premises:

NOW, THEREFORE, upon consideration thereof, this Court does hereby allow said appeal as prayed for, and does hereby fix the amount of the cost and/or supersedeas bond in the sum of Two Thousand Dollars ($2,000.00), and does hereby order that such bond shall operate as a supersedeas bond.

DATED this 5th day of September, 1933.

F. C. JACOBS
Judge of the United States District Court
for the District of Arizona.

[Endorsed]: Filed Sep 5 1933. [305]

[Title of Court and Cause L-844-Phx.]

ORDER ALLOWING APPEAL AND FIXING AMOUNT OF COST AND/OR SUPERSEDEAS BOND

On the 5th day of September, 1933, the above entitled defendants, by their attorneys, filed herein and presented to this Court their Petition for the Allowance of an Appeal in said Cause, together with assignments of error intended to be urged by them, praying also that a duly authenticated transcript of the record, proceedings and all papers and documents upon which the judgment herein was rendered may be sent to the United States Circuit Court of Appeals for the Ninth Circuit, and that citation issue; and further praying that this Court fix the amount of the cost and/or supersedeas bond to be given by said defendants in this cause; and that such other and further proceedings be had as may

be proper in the premises:

NOW, THEREFORE, upon consideration thereof, this Court does hereby allow said appeal as prayed for, and does hereby fix the amount of the cost and/or supersedeas bond in the sum of Three Thousand Dollars ($3000.00), and does hereby order that such bond shall operate as a supersedeas bond.

Dated this 5th day of September, 1933.

F. C. JACOBS
Judge of the United States District Court,
for the District of Arizona.

[Endorsed]: Filed Sep. 5, 1933. [306]

[Title of Court and Cause No. L-738-Phx.]

BOND.

KNOW ALL MEN BY THESE PRESENTS: That Southern Pacific Company, a corporation, as principal, and Pacific Indemnity Company, a corporation, as surety, are held and firmly bound unto F. S. Baffert and A. S. Leon, co-partners, trading under the firm name of Baffert & Leon, plaintiffs in the above entitled action, in the full and just sum of Two Thousand ($2000.00) Dollars, to be paid to said F. S. Baffert and A. S. Leon, co-partners, trading under the firm name of Baffert & Leon, their successors or assigns; for the payment of which sum well and truly to be made we hereby bind ourselves, our successors and assigns, jointly and severally by these presents.

Signed and sealed this 5th day of September, 1933.

The condition of this obligation is such that whereas a certain judgment and decision in the above entitled cause was rendered in favor of said plaintiffs, F. S. Baffert and A. S. Leon, co-partners, trading under the firm name of Baffert & Leon, and against said defendant, Southern Pacific Company, a corporation, on or about the 9th day of June, 1933, by the Honorable F. C. Jacobs, presiding Judge of the above entitled cause and court, and whereas, the said defendant, Southern Pacific Company, a corporation, after the entry and filing of [307] said judgment duly filed and presented to the above entitled court its petition, praying for the allowance of an appeal for the review of said judgment by the United States Circuit Court of Appeals for the Ninth Circuit, for the purpose of reversing said judgment, and said appeal was allowed by the said Honorable F. C. Jacobs, presiding Judge of the United States District Court for the District of Arizona, upon the said defendant giving bond, according to law, in the sum of Two Thousand ($2000.00) Dollars, which said bond shall operate as a supersedeas bond.

NOW, THEREFORE, if the said Southern Pacific Company, a corporation, defendant above named, shall prosecute its said appeal to effect and shall pay the amount of said judgment and answer all damages and costs if it fails to make its plea good, then the above obligation to be void, otherwise it shall remain in full force and effect.

And the said surety in this obligation hereby covenants and agrees that in case of a breach of any condition of this bond the United States District Court for the District of Arizona may, upon notice to said surety of not less than ten (10) days proceed summarily in this cause to ascertain the amount which said surety is bound to pay on account of such breach and render judgment therefor against said surety and to order execution therefor. [308]

IN WITNESS WHEREOF, the undersigned have executed this bond this said 5th day of September, 1933.

SOUTHERN PACIFIC COMPANY,
a Corporation,
[Corporate Seal]
By J. H. Dyer
Its Vice President

Attest:
G. L. KING
Its Asst. Secretary

PRINCIPAL

PACIFIC INDEMNITY COMPANY
By D. Ray Kleinman [Seal]
[Seal] Attorney-in-Fact.

SURETY.

The above bond and surety approved this 5th day of Sept., 1933.

F. C. JACOBS
Judge of the United States District Court
for the District of Arizona. [309]

[Title of Court and Cause No. L-738.]

MINUTE ENTRY OF TUESDAY, SEPTEMBER 5, 1933.

Comes now the Defendant by its counsel, Messrs. Baker and Whitney, by Alexander B. Baker, Esquire, and presents to the Courts its bond on appeal, executed on the 5th day of September, 1933, in the sum of Two Thousand Dollars ($2,000.00), with Pacific Indemnity Company, a corporation, as surety thereon, and

IT IS ORDERED that said bond be and the same is hereby accepted and approved. [312]

[Title of Court and Cause No. L-844-Phx.]

BOND

KNOW ALL MEN BY THESE PRESENTS: That Southern Pacific Company, a corporation, and Santa Maria Valley Railroad Company, a corporation, as principals, and Pacific Indemnity Company, a corporation, as surety, are held and firmly bound unto Wheeler-Perry Company, a corporation, plaintiff in the above entitled action in the full and just sum of Three Thousand ($3000.00) Dollars, to be paid to said Wheeler-Perry Company, its successors or assigns; for the payment of which sum well and truly to be made we hereby bind ourselves, our successors and assigns, jointly and severally by these presents.

Signed and sealed this 5th day of September, 1933.

The condition of this obligation is such that whereas a certain judgment and decision in the above entitled cause was rendered in favor of said plaintiff, Wheeler-Perry Company, a corporation, and against said defendants, Southern Pacific Company, a corporation, and Santa Maria Valley Railroad Company, a corporation, on or about the 9th day of June, 1933, by the Honorable F. C. Jacobs, presiding Judge of the above entitled cause and court, and whereas, the said defendants, Southern Pacific Company, a corporation, and Santa Maria Valley Railroad Company, a corporation, after the entry and filing of said [313] judgment duly filed and presented to the above entitled court their petition, praying for the allowance of an appeal for the review of said judgment by the United States Circuit Court of Appeals for the Ninth Circuit, for the purpose of reversing said judgment, and said appeal was allowed by the said Honorable F. C. Jacobs, presiding Judge of the United States District Court for the District of Arizona, upon the said defendants giving bond, according to law, in the sum of Three Thousand ($3000.00) Dollars, which said bond shall operate as a supersedeas bond.

NOW, THEREFORE, if the said Southern Pacific Company, a corporation, and Santa Maria Valley Railroad Company, a corporation, defendants above named, shall prosecute their said appeal

to effect and shall pay the amount of said judgment and answer all damages and costs if they fail to make their plea good, then the above obligation to be void, otherwise it shall remain in full force and effect.

And the said surety in this obligation hereby covenants and agrees that in case of a breach of any condition of this bond the United States District Court for the District of Arizona may, upon notice to said surety of not less than ten (10) days proceed summarily in this cause to ascertain the amount which said surety is bound to pay on account of such breach and render judgment therefor against said surety and to order execution therefor. [314]

IN WITNESS WHEREOF, the undersigned have executed this bond this said 5th day of September, 1933.

SOUTHERN PACIFIC COMPANY,
a Corporation,
[Corporate Seal]
By J. H. Dyer,
Its Vice President

Attest:
G. L. KING
Its Assistant Secretary

SANTA MARIA VALLEY RAILROAD COMPANY, a Corporation,
[Corporate Seal]
By Raymond M. Stephens,
Its Vice President

Attest:
LEROY E. SULLIVAN,
Its Secretary

PRINCIPALS.
PACIFIC INDEMNITY COMPANY.
[Seal] By D. Ray Kleinman,
Its Attorney-in-Fact.

SURETY.

The above bond and surety approved this 5th day of Sept., 1933.

F. C. JACOBS
Judge of the United States District Court
for the District of Arizona. [315]

[Title of Court and Cause No. L-844.]

MINUTE ENTRY OF TUESDAY, SEPTEMBER 5, 1933.

Come now the Defendants by their counsel, Messrs. Baker and Whitney, by Alexander B. Baker, Esquire, and present to the Court their bond on appeal, executed on the 5th day of September, 1933, in the sum of Three Thousand Dollars ($3,000.00) with Pacific Indemnity Company, a corporation, as surety thereon, and

IT IS ORDERED that said bond be and the same is hereby accepted and approved. [318]

[Title of Court and Cause—Consolidated Cases.]

PRAECIPE OF TRANSCRIPT OF RECORD.

To the Clerk of the above entitled Court, and to Messrs. Samuel White and F. L. Snell, Jr., attorneys for plaintiffs and appellees:

You and each of you are hereby notified that the transcript of record to be transmitted to the United States Circuit Court of Appeals for the Ninth Circuit, in connection with the appeals heretofore filed and allowed in the above entitled causes, shall contain properly certified copies of the following papers, proceedings and documents which defendants and appellants aver to be necessary to a determination of said causes in said appellate court, to-wit:

1. The summons and return in Cause No. L-738;
2. The complaint in Cause No. L-738;
3. The amended answer in Cause No. L-738;
4. The summons and return in Cause No. L-844;
5. The complaint in Cause No. L-844; [319]
6. The answer in Cause No. L-844;
7. The stipulation waiving a trial by jury in each of said causes;
8. The special findings of fact and conclusions of law requested by the plaintiffs in each of said causes;
9. The defendants' proposed amendments and additions to plaintiffs' said requested special findings of fact and conclusions of law (one document covering both causes);
10. The special findings of fact and conclusions

of law requested by defendants (one document covering both causes);

11. The special findings of fact and conclusions of law made and adopted by the Court (one document covering both causes);

12. The stipulation for the incorporation by reference, in the special findings of fact adopted by the Court, of Exhibit "B" annexed to the complaint in Cause No. L-738, and of Exhibit "A" annexed to the complaint in Cause No. L-844;

13. The judgment in said Cause No. L-738;

14. The judgment in said Cause No. L-844, as modified pursuant to stipulation of the parties, dated July 8, 1933;

15. The stipulation for the consolidation of the records in said causes (one document covering both causes);

16. The order for the consolidation of the records in said causes (one document covering both causes);

17. Plaintiffs' memorandum of costs and disbursements, together with notice of application to tax costs, filed in Cause No. L-738;

18. Defendant's exceptions and objections to plaintiffs' memorandum of costs and disbursements in Cause No. L-738;

19. Plaintiff's memorandum of costs and disbursements, together with notice of application to tax costs, filed in Cause No. L-844;

20. Defendants' exceptions to plaintiff's memorandum of costs and disbursements in Cause No. L-844; [320]

21. All minute entries of the Clerk;

22. The bill of exceptions in the consolidated causes;

23. The petition for appeal in each of said causes;

24. The assignments of error (one document covering both causes);

25. The order allowing appeal and fixing the amount of the cost and/or supersedeas bond, in each of said causes;

26. The supersedeas and appeal bond, and approval thereof, in each of said causes;

27. The citation on appeal in each of said causes;

28. This praecipe (one document covering both causes);

29. Clerk's certificate.

Dated this 6th day of September, 1933.

BAKER & WHITNEY,
CHALMERS, FENNEMORE & NAIRN,
JAMES E. LYONS,
GERALD E. DUFFY,
BURTON MASON,
Attorneys for Defendants and Appellants.

Received copy of the within Praecipe this 6th day of September, 1933.

SAMUEL WHITE,
F. L. SNELL, JR.,
ELLIOTT & SNELL,
Attorneys for Plaintiffs.

[Endorsed]: Filed Sep. 6, 1933. [321]

[Title of Court and Cause—Consolidated Cases.]

ORDER ENLARGING TIME FOR FILING AND DOCKETING IN CIRCUIT COURT OF APPEALS.

THIS MATTER coming on this 29th day of September, 1933, and it appearing that appeal has been allowed in the above cases, transferring the same to the United States Circuit Court of Appeals for the Ninth Circuit for review; and it appearing to the satisfaction of the Court that the Clerk of the above Court will be unable to complete the preparation of the transcript of record in the above cases within the thirty day period limited in the citation, and that there is good cause for enlarging and extending the time for filing and docketing the cases in the said Circuit Court of Appeals; [322]

NOW, THEREFORE, it is hereby ORDERED that the time for the filing of the records in both of the above cases, and docketing said cases in the United States Circuit Court of Appeals for the Ninth Circuit is hereby enlarged and extended to November 1, 1933.

DATED: September 29, 1933.

F. C. JACOBS,
Judge.

[Endorsed]: Filed Sep. 29, 1933. [323]

[Title of Court and Cause—Consolidated Cases.]

ORDER ENLARGING TIME FOR FILING AND DOCKETING IN CIRCUIT COURT OF APPEALS.

THIS MATTER coming on this 20th day of October, 1933, and it appearing that appeal has been allowed in the above case, transferring the same to the United States Circuit Court of Appeals for the Ninth Circuit for review; and it appearing to the satisfaction of the Court that there is good cause for enlarging and extending the time for filing and docketing the case in the said Circuit Court of Appeals;

NOW, THEREFORE, it is hereby ORDERED that the time for the filing of the record in the above case, and docketing said [324] cause in the United States Circuit Court of Appeals for the Ninth Circuit is hereby enlarged and extended to December 1, 1933.

Dated: October 20, 1933.

F. C. JACOBS,
Judge.

[Endorsed]: Filed Oct. 20, 1933. [325]

In the United States District Court for the District of Arizona.

United States of America,
District of Arizona.—ss.

I, J. Lee Baker, Clerk of the United States District Court for the District of Arizona, do hereby

certify that I am the custodian of the records, papers and files of the said Court, including the records, papers and files in the cases of F. J. Baffert and A. S. Leon, co-partners trading under the firm name of Baffert and Leon, Plaintiffs, versus Southern Pacific Company, a corporation, Defendant, numbered L-738-Phoenix, and Wheeler-Perry Company, a corporation, Plaintiff, versus Southern Pacific Company, a corporation, and Santa Maria Valley Railroad Company, a corporation, Defendants, numbered L-844-Phoenix, on the docket of said Court.

I further certify that the attached pages, numbered 1 to 332, inclusive, contain a full, true and correct transcript of the proceedings of said causes and all the papers filed therein, together with the endorsements of filing thereon, called for and designated in the praecipe filed in said causes and made a part of the transcript attached hereto, as the same appear from the originals of record and on file in my office as such Clerk, in the City of Phoenix, State and District aforesaid.

I further certify that the Clerk's fee for preparing and certifying to this said transcript of record amounts to the sum of $58.30 and that said sum has been paid to me by counsel for the appellants.

I further certify that the original citations issued in the said causes are hereto attached and made a part of this record.

WITNESS my hand and the Seal of the said Court this 23d day of November, 1933.

[Seal] J. LEE BAKER,
Clerk. [326]

[Title of Court and Cause No. L-738-Phx.]

CITATION ON APPEAL.

To F. J. BAFFERT and A. S. LEON, co-partners, trading under the firm name of BAFFERT & LEON, plaintiffs above named, GREETING:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit in the City of San Francisco, in the State of California, within thirty (30) days from the date hereof, pursuant to an appeal and/or order allowing appeal filed in the office of the Clerk of the United States District Court for the District of Arizona, wherein Southern Pacific Company, a corporation, is appellant and you are appellees, to show cause, if any there be, why the judgment rendered against said Southern Pacific Company, a corporation, appellant as in said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable F. C. Jacobs, Judge of the United States District Court for the District of Arizona, this 5th day of September, 1933.

[Seal] F. C. JACOBS
Judge of the United States District Court, for the District of Arizona. [327]

Service of the within Citation on Appeal, and receipt of a copy thereof is hereby admitted this 6th day of September, 1933. Service is also admitted, and receipt is acknowledged, as of this date, of copies of Petition for Appeal, Order Allowing Appeal and Fixing Amount of Cost and/or

Supersedeas Bond, Assignments of Error, and Bond, all having to do with the above entitled and numbered cause.

SAMUEL WHITE
F. L. SNELL, JR.
Attorneys for F. J. Baffert and A. S. Leon, co-partners, trading under the firm name of Baffert & Leon, plaintiffs and Appellees.

[Endorsed]: Filed Sep. 6, 1933. [328]

[Title of Court and Cause No. L-844-Phx.]

CITATION ON APPEAL.

To Wheeler-Perry Company, a corporation, plaintiff above named, GREETING:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, in the City of San Francisco, in the State of California, within thirty (30) days from the date hereof pursuant to an appeal, and/or order allowing appeal, filed in the office of the Clerk of the United States District Court, for the District of Arizona, wherein Southern Pacific Company, a corporation, and Santa Maria Valley Railroad Company, a corporation, are appellants, and you are appellee, to show cause, if any there by, why the judgment rendered against said Southern Pacific Company, a corporation, and Santa Maria Valley Railroad Company, a corporation, appellants as in said appeal mentioned, should not be corrected and why speedy justice should not

be done to the parties in that behalf.

WITNESS, the Honorable F. C. Jacobs, Judge of the United States District Court for the District of Arizona, this 5th day of September, 1933.

[Seal] F. C. JACOBS
Judge of the United States District Court
for the District of Arizona. [330]

Service of the within Citation on Appeal, and receipt of a copy thereof is hereby admitted this 6th day of September, 1933. Service is also admitted, and receipt is acknowledged, as of this date, of copies of Petition for Appeal, Order Allowing Appeal and Fixing Amount of Cost and/or Supersedeas Bond, Assignments of Error, and Bond, all having to do with the above entitled and numbered cause.

SAMUEL WHITE
F. L. SNELL, Jr.
Attorneys for Wheeler-Perry Company,
plaintiff and appellee.

[Endorsed]: Filed Sep. 6, 1933. [331]

In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 7343

SOUTHERN PACIFIC COMPANY, a corporation,

Defendant and Appellant,

vs.

F. J. BAFFERT and A. S. LEON, co-partners trading under the firm name of Baffert and Leon,

Plaintiffs and Appellees.

SOUTHERN PACIFIC COMPANY, a corporation, and SANTA MARIA RAILROAD COMPANY, a corporation,

Defendants and Appellants,

vs.

WHEELER-PERRY COMPANY, a corporation,

Plaintiff and Appellee.

STATEMENT BY APPELLANTS OF PARTS OF RECORD NECESSARY TO BE PRINTED.

To HONORABLE PAUL P. O'BRIEN, Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, and to MESSRS. SAMUEL WHITE and F. L. SNELL, JR., Attorneys for plaintiffs and appellees:

I.

Defendants and appellants herein state that in

the review of the above causes by the United States Circuit Court of Appeals for the Ninth Circuit they intend to rely upon alleged errors committed by the trial court as follows, to wit:

1. Errors of the trial court in the admission and/or exclusion of evidence upon the trial of said causes.
2. Errors of the trial court in its findings of fact and conclusions of law.
3. Errors of the trial court in refusing to make findings of fact and conclusions of law requested by the defendants and appellants.
4. Errors of the trial court in rendering judgments in favor of the plaintiffs and appellees and against the defendants and appellants.

II.

Defendants and appellants also state that for the proper consideration of said alleged errors they think it necessary to print the following parts and portions of the transcript of record certified and filed by the Clerk of the United States District Court for Arizona with the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, to wit:

All of said transcript of record, save and except the following:

The minute entries of May 29, 1933, and October 21, 1933, appearing on pages 30 and 31, respectively, of said transcript;

The findings of fact and conclusions of law proposed and requested by defendants, appearing at pages 81 to 93, inclusive, of said transcript;

The findings of fact and conclusions of law made and adopted by the trial court, appearing at pages 100 to 109, inclusive, of said transcript;

The minute entries of November 10, 1930, December 8, 1930, January 29, 1931, March 23, 1931, December 28, 1931, and February 15, 1932, appearing at pages 123 to 128, inclusive, of said transcript;

The judgment of the trial court in cause No. L-738, appearing at pages 143 and 144 of said transcript;

The minute entries of December 21, 1931, January 4, 1932, January 25, 1932, January 29, 1932, February 15, 1932, and May 14, 1932, appearing at pages 147, 148, and 150 to 153, inclusive, of said transcript;

The judgment in cause No. L-844, appearing at pages 157 and 158 of said transcript;

The power of attorney issued by Pacific Indemnity Company, surety named in the bonds on appeal, in favor of its agent and attorney in fact for Arizona, appearing upon page 310 and again upon page 316 of said transcript.

Dated at San Francisco, California, this 29th day of November, 1933.

BAKER & WHITNEY
JAMES E. LYONS
BURTON MASON
Attorneys for Defendants and Appellants.

[Endorsed]: Service of the within Statement by Appellants of Parts of Record Necessary to be

Printed is admitted this 4th day of Dec., 1933.

SAMUEL WHITE,
F. L. SNELL, JR.,
Attorneys for Plaintiffs and Appellees.

[Endorsed]: Filed Dec. 6, 1933. Paul P. O'Brien, Clerk.

[Endorsed]: No. 7343. United States Circuit Court of Appeals for the Ninth Circuit. Southern Pacific Company, a corporation, Appellant, vs. F. J. Baffert and A. S. Leon, copartners, trading under the firm name of Baffert & Leon, Appellees, and Southern Pacific Company, a corporation, and Santa Maria Valley Railroad Company, a corporation, Appellants, vs. Wheeler-Perry Company, a corporation, Appellee. Transcript of Record. Upon Appeals from the District Court of the United States for the District of Arizona.

Filed November 27, 1933.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.